

Council Communication

Department: Community Development Case No.: URN-09-001 Applicant: Community Development Department	Ordinance <u>6037</u>	City Council: 7/27/09 Planning Commission: 7/14/09 First Reading: 7/27/09 Second Reading: 8/10/09 Third Reading: N/A						
Subject/Title								
Amendment #2 to the Playland Park Urban Renewal Plan								
Location								
North and south of the I-480 and 41 st Street interchange								
Background/Discussion								
<p><u>Background</u></p> <p>In June of 2003, City Council adopted the Playland Park Urban Renewal Plan in order to accommodate a high rise condominium project, which never materialized. In June of 2005, the urban renewal plan was amended to add additional land and several new projects, including riverfront development, the development of portions of Playland Park and the redevelopment of the Frito Lay and Dodge Park clubhouse areas. The urban renewal plan is again in need of amending, to add new areas along the Missouri River, update proposed project area activities, including costs and public debt and to modify the effective term of the plan.</p> <p><u>Discussion</u></p> <p>On June 22, 2009, the City Council passed a resolution of necessity, which directed staff to initiate the process of amending the Playland Park Urban Renewal Plan and Area. This resolution established the following actions and timeframes:</p> <table style="margin-left: 40px; width: 80%;"> <tr> <td style="width: 30%;">July 2, 2009</td> <td>Consultation hearing with affected taxing jurisdictions</td> </tr> <tr> <td>July 14, 2009</td> <td>City Planning Commission hearing and review</td> </tr> <tr> <td>July 27, 2009</td> <td>City Council public hearing</td> </tr> </table> <p>The consultation hearing was held on July 2, 2009 and no individuals or groups appeared at the hearing. Additionally, no written correspondence has been received by the Community Development Department either in support or against the proposed amendment. One resident of the area called for additional information.</p> <p>Iowa statutes require the City Planning Commission to review the amended plan for conformity to the comprehensive plan and to forward a recommendation to City Council prior to public hearing. An amendment to the urban renewal plan conforming to the requirements of Chapter 403 of the Iowa Code has been prepared. This amended plan also conforms to the general development plan of the City as a whole and is attached for your review.</p>			July 2, 2009	Consultation hearing with affected taxing jurisdictions	July 14, 2009	City Planning Commission hearing and review	July 27, 2009	City Council public hearing
July 2, 2009	Consultation hearing with affected taxing jurisdictions							
July 14, 2009	City Planning Commission hearing and review							
July 27, 2009	City Council public hearing							
Staff Recommendation								
The Community Development Department recommends approval of Amendment #2 to the Playland Park Urban Renewal Plan and Area.								
Public Hearing								
Gayle Malmquist appeared before the Planning Commission in favor of the request. No one appeared in opposition.								
Planning Commission Recommendation								
The Planning Commission recommends approval of Amendment #2 to the Playland Park Urban Renewal Plan and Area, as presented.								
VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 Motion: Carried								
Attachments								
Amendment #2 to the Playland Park Urban Renewal Plan and Area								
Submitted by: Brenda Carrico, Program Coordinator, Community Development Department								
Approved by: Donald D. Gross, Director, Community Development Department								

ORDINANCE NO. 6037

AN ORDINANCE AMENDING ORDINANCE NOS. 5766 AND 5859, PROVIDING THAT GENERAL PROPERTY TAXES LEVIED AND COLLECTED EACH YEAR ON ALL PROPERTY LOCATED WITHIN THE AMENDED PLAYLAND PARK URBAN RENEWAL PROJECT AREA, IN THE CITY OF COUNCIL BLUFFS, COUNTY OF POTTAWATTAMIE, STATE OF IOWA, BY AND FOR THE BENEFIT OF THE STATE OF IOWA, CITY OF COUNCIL BLUFFS, COUNTY OF POTTAWATTAMIE, COUNCIL BLUFFS COMMUNITY SCHOOL DISTRICT, AND OTHER TAXING DISTRICTS, BE PAID TO A SPECIAL FUND FOR PAYMENT OF PRINCIPAL AND INTEREST ON LOANS, MONIES ADVANCED TO AND INDEBTEDNESS, INCLUDING BONDS ISSUED OR TO BE ISSUED, INCURRED BY THE CITY IN CONNECTION WITH THE AMENDED PLAYLAND PARK URBAN RENEWAL REDEVELOPMENT PROJECT

WHEREAS, the City Council of the City of Council Bluffs, State of Iowa, has heretofore, in Ordinance Nos. 5766 and 4859, provided for the division of taxes within the Playland Park Urban Renewal Project Area, pursuant to Section 403.19 of the Code of Iowa; and

WHEREAS, additional territory now has been added to the Playland Park Urban Renewal Project Area; and

WHEREAS, indebtedness has been incurred by the City, and additional indebtedness is anticipated to be incurred in the future, to finance urban renewal project activities within the amended Playland Park Urban Renewal Project Area, and the continuing needs of redevelopment within the amended Playland Park Urban Renewal Project Area are such as to require the continued application of the incremental tax resources of the amended Playland Park Urban Renewal Project Area; and

WHEREAS, the following enactment is necessary to accomplish the objectives described in the premises.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, STATE OF IOWA, THAT:

Ordinance Numbers 5766 and 5859 are hereby amended to read as follows:

Section 1: For purposes of this Ordinance, the following terms shall have the following meanings:

(a) Original Project Area shall mean that portion the City of Council Bluffs, State of Iowa, described in the Urban Renewal Plan for the Playland Park Urban Renewal Area approved by Resolution No. 03-138 on June 23, 2003, which Original Project Area includes the lots and parcels located within the area legally described as follows:

Lots 174 through 185 in Twin City Gardens an addition to Council Bluffs, Iowa, part of Government Lot 3 and accretions thereto in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28 and in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29 and part of Government Lot 1 and accretions thereto in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32 and in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, all in Township 75 North Range 44 West of the 5th Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa more particularly described as follows:

Begin at the intersection of the West right-of-way line of North 40th Street with the centerline of Avenue B; thence West along the centerline of Avenue B approximately 2,500 feet to the Bulkhead line of the left (Easterly) shoreline of the Missouri River; thence Southerly along said line approximately 1,750 feet to the Southerly right-of-way line of Interstate Route I-480 being the Northerly right-of-way line of Old West Broadway; thence Easterly and Northeasterly along said line approximately 2,000 feet to the Northerly prolongation of the Easterly right-of-way line of 41st Street; thence Southerly along said prolongation and along the Westerly line of the parcel owned by Frito Lay Inc. 298 feet more or less to the South corner of said parcel; thence Northeasterly along the Southeasterly line of Frito Lay parcel 280 feet more or less; thence Southwesterly along the Frito Lay parcel 50 feet; thence Northeasterly along the Frito Lay parcel 670 feet to the East corner of the Frito Lay parcel; and to the Southerly right-of-way line of 37th Street Extension; thence Northwesterly/Westerly, and Southwesterly along said right-of-way line 340 feet more or less to the Southerly prolongation of the West right-of-way line of North 40th Street; thence North along said prolongation and along said line 1,100 feet more or less to the centerline of Avenue B and

the point of beginning. Said Urban Renewal tract contains 67.63 acres more or less.

(b) Amendment No. 1 Area shall mean that portion of the City of Council Bluffs, State of Iowa, described in Amendment No. 1 to the Urban Renewal Plan for the Playland Park Urban Renewal Area approved by Resolution No. 05-186 on June 27, 2005, which Amendment No. 1 Area includes the lots and parcels located within the area legally described as follows except those included in the Original Project Area as set out above:

Lots 174 through 185 in Twin City Gardens an Addition to the City of Council Bluffs, Iowa, part of Government Lot 3 and accretions thereto in the Southwest Quarter of the Southwest Quarter SW1/4SW1/4 of Section 28 and in the Southeast Quarter of the Southeast Quarter SE1/4SE1/4 of Section 29 and part of Government Lot 1 and accretions thereto in the Northeast Quarter of the Northeast Quarter NE1/4NE1/4 of Section 32 and in the Northwest Quarter of the Northwest Quarter NW1/4NW1/4 and Northeast Quarter of the Northwest Quarter NE1/4NW1/4 of Section 33, all in Township 75 North, Range 44 West of the Fifth Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa, more fully described as follows:

Beginning at the intersection of the westerly right-of-way line of North 40th Street with the centerline of Avenue B;

thence westerly along said centerline of Avenue B, 2,500 feet, more or less, to the easterly high bank of the Missouri River;

thence southerly, along said easterly high bank of the Missouri River, 1750 feet, more or less, to the southerly right-of-way line of Interstate Route I-480, said southerly right-of-way line also being the northerly right-of-way line of Old West Broadway;

thence easterly and northeasterly along said right-of-way lines, 2000 feet, more or less, to a point on the northerly prolongation of the easterly right-of-way line of 41st Street;

thence along said northerly prolongation and along said easterly right-of-way line, South 24 degrees 17 minutes 58 seconds East, 198.93 feet to a point on a northerly line of

property owned by the City of Council Bluffs (Dodge Park Golf Course);

thence along said northerly line, South 65 degrees 46 minutes 10 seconds West, 80.00 feet to a point on the westerly line of the said City of Council Bluffs property;

thence along said westerly line, South 24 degrees 20 minutes 58 seconds East, 303.68 feet;

thence North 80 degrees 28 minutes 59 seconds East, 62.63 feet to a point on a non-tangent curve, concave northwesterly, to which point a radial line bears South 9 degrees 16 minutes 53 seconds East, 257.12 feet;

thence northeasterly, along said curve, through a central angle of 96 degrees 06 minutes 50 seconds, 431.31 feet;

thence North 65 degrees 35 minutes 40 seconds East, 156.25 feet;

thence North 37 degrees 36 minutes 10 seconds East, 87.56 feet;

thence North 69 degrees 17 minutes 02 seconds East, 173.94 feet;

thence South 66 degrees 42 minutes 24 seconds East, 97.62 feet;

thence South 6 degrees 23 minutes 50 seconds East, 518.48 feet;

thence South 0 degrees 09 minutes 15 seconds West, 520.29 feet;

thence South 89 degrees 32 minutes 49 seconds East, 250.00 feet to a point on the southerly prolongation of the westerly line of Ferry Addition to the City of Council Bluffs;

thence along said southerly prolongation, along said westerly line of Ferry Addition and along its prolongation northerly, North 0 degrees 09 minutes 15 seconds East, 1104 feet to a

point on the southerly right-of-way line of the South 37th Street Extension;

thence in a general northwesterly and westerly direction along said southerly right-of-way line, 580 feet, more or less, to the intersection with the southerly prolongation of the westerly right-of-way line of said North 40th Street;

thence northerly, along said southerly prolongation and along said westerly right-of-way line 1050 feet, more or less, to the centerline of said Avenue B and the Point of Beginning.

Said parcel contains an area of 76.53 acres, more or less.

(c) Amendment No. 2 Area shall mean that portion of the City of Council Bluffs, State of Iowa, described in Amendment No. 2 to the Urban Renewal Plan for the Playland Park Urban Renewal Area approved by Resolution No. _____ on July 27, 2009, which Amendment No. 2 Area includes the lots and parcels located within the area legally described as follows:

(SOUTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE ACCRETIONS TO GOVERNMENT LOTS 1, 2 AND 3, TOGETHER WITH RIPARIAN RIGHTS IN SECTION 33, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF WEST BROADWAY (I-480) AND THE EAST RIGHT-OF-WAY LINE OF THE COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-WAY LINE, 2739 FEET (MORE OR LESS) TO A POINT ON THE EASTERLY PROLONGATION OF THE SOUTH BACK-OF-CURB LINE OF HARRAH'S CASINO NORTH PARKING LOT;

THENCE ALONG SAID EASTERLY PROLONGATION, ALONG SAID SOUTHERLY BACK-OF-CURB AND

ALONG IT'S WESTERLY PROLONGATION, SOUTH 64 DEGREES 10 MINUTES 04 SECONDS WEST, 564 FEET (MORE OR LESS) TO A POINT ON THE EAST HIGH BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH BANK, 2516 FEET (MORE OR LESS) TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE OF WEST BROADWAY (I-480);

THENCE EASTERLY, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 675 FEET (MORE OR LESS) TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 25.6 ACRES, MORE OR LESS.

AND

(NORTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER (W1/2 SW1/4) IN SECTION 28 AND A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER (E1/2 SE1/4) OF SECTION 29, ALL IN TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF AVENUE "B" AND THE EAST RIGHT-OF-WAY LINE OF THE COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE ALONG THE WESTERLY PROLONGATION OF SAID NORTH RIGHT-OF-WAY LINE, 895 FEET (MORE OR LESS) TO A POINT ON THE EAST HIGH BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH BANK, 1666 FEET (MORE OR LESS) TO A POINT ON

THE WESTERLY PROLONGATION OF THE NORTH
RIGHT-OF-WAY LINE OF AVENUE "G";

THENCE ALONG SAID WESTERLY PROLONGATION,
SOUTH 88 DEGREES 34 MINUTES 53 SECONDS EAST,
1369 FEET (MORE OR LESS) TO A POINT ON THE
EAST RIGHT-OF-WAY LINE OF SAID COUNCIL
BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHWESTERLY, ALONG SAID EAST
RIGHT-OF-WAY LINE, 1793 FEET (MORE OR LESS) TO
THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 45.87 ACRES,
MORE OR LESS.

(d) Amended Project Area shall mean that portion of the City of Council Bluffs, State of Iowa, included within the Original Project Area, the Amendment No. 1 Area and the Amendment No. 2 Area, which Amended Project Area includes the lots and parcels located within the area legally described as follows:

ORIGINAL AND AMENDMENT NO. 1 AREA

Lots 174 through 185 in Twin City Gardens an Addition to the City of Council Bluffs, Iowa, part of Government Lot 3 and accretions thereto in the Southwest Quarter of the Southwest Quarter SW1/4SW1/4 of Section 28 and in the Southeast Quarter of the Southeast Quarter SE1/4SE1/4 of Section 29 and part of Government Lot 1 and accretions thereto in the Northeast Quarter of the Northeast Quarter NE1/4NE1/4 of Section 32 and in the Northwest Quarter of the Northwest Quarter NW1/4NW1/4 and Northeast Quarter of the Northwest Quarter NE1/4NW1/4 of Section 33, all in Township 75 North, Range 44 West of the Fifth Principal Meridian, City of Council Bluffs, Pottawattamie County, Iowa, more fully described as follows:

Beginning at the intersection of the westerly right-of-way line of North 40th Street with the centerline of Avenue B;

thence westerly along said centerline of Avenue B, 2,500 feet, more or less, to the easterly high bank of the Missouri River;

thence southerly, along said easterly high bank of the Missouri River, 1750 feet, more or less, to the southerly right-of-way line of Interstate Route I-480, said southerly right-of-way line also being the northerly right-of-way line of Old West Broadway;

thence easterly and northeasterly along said right-of-way lines, 2000 feet, more or less, to a point on the northerly prolongation of the easterly right-of-way line of 41st Street;

thence along said northerly prolongation and along said easterly right-of-way line, South 24 degrees 17 minutes 58 seconds East, 198.93 feet to a point on a northerly line of property owned by the City of Council Bluffs (Dodge Park Golf Course);

thence along said northerly line, South 65 degrees 46 minutes 10 seconds West, 80.00 feet to a point on the westerly line of the said City of Council Bluffs property;

thence along said westerly line, South 24 degrees 20 minutes 58 seconds East, 303.68 feet;

thence North 80 degrees 28 minutes 59 seconds East, 62.63 feet to a point on a non-tangent curve, concave northwesterly, to which point a radial line bears South 9 degrees 16 minutes 53 seconds East, 257.12 feet;

thence northeasterly, along said curve, through a central angle of 96 degrees 06 minutes 50 seconds, 431.31 feet;

thence North 65 degrees 35 minutes 40 seconds East, 156.25 feet;

thence North 37 degrees 36 minutes 10 seconds East, 87.56 feet;

thence North 69 degrees 17 minutes 02 seconds East, 173.94 feet;

thence South 66 degrees 42 minutes 24 seconds East, 97.62 feet;

thence South 6 degrees 23 minutes 50 seconds East, 518.48 feet;

thence South 0 degrees 09 minutes 15 seconds West, 520.29 feet;

thence South 89 degrees 32 minutes 49 seconds East, 250.00 feet to a point on the southerly prolongation of the westerly line of Ferry Addition to the City of Council Bluffs;

thence along said southerly prolongation, along said westerly line of Ferry Addition and along its prolongation northerly, North 0 degrees 09 minutes 15 seconds East, 1104 feet to a point on the southerly right-of-way line of the South 37th Street Extension;

thence in a general northwesterly and westerly direction along said southerly right-of-way line, 580 feet, more or less, to the intersection with the southerly prolongation of the westerly right-of-way line of said North 40th Street;

thence northerly, along said southerly prolongation and along said westerly right-of-way line 1050 feet, more or less, to the centerline of said Avenue B and the Point of Beginning.

Said parcel contains an area of 76.53 acres, more or less.

AMENDMENT NO. 2 AREA

(SOUTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE ACCRETIONS TO GOVERNMENT LOTS 1, 2 AND 3, TOGETHER WITH RIPARIAN RIGHTS IN SECTION 33, TOWNSHIP 75 NORTH, RANGE 44 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF WEST BROADWAY (I-480)

AND THE EAST RIGHT-OF-WAY LINE OF THE
COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHERLY ALONG SAID EAST RIGHT-OF-
WAY LINE, 2739 FEET (MORE OR LESS) TO A POINT
ON THE EASTERLY PROLONGATION OF THE SOUTH
BACK-OF-CURB LINE OF HARRAH'S CASINO NORTH
PARKING LOT;

THENCE ALONG SAID EASTERLY PROLONGATION,
ALONG SAID SOUTHERLY BACK-OF-CURB AND
ALONG IT'S WESTERLY PROLONGATION, SOUTH 64
DEGREES 10 MINUTES 04 SECONDS WEST, 564 FEET
(MORE OR LESS) TO A POINT ON THE EAST HIGH
BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH
BANK, 2516 FEET (MORE OR LESS) TO A POINT ON
SAID SOUTH RIGHT-OF-WAY LINE OF WEST
BROADWAY (I-480);

THENCE EASTERLY, ALONG SAID SOUTH RIGHT-OF-
WAY LINE, 675 FEET (MORE OR LESS) TO THE POINT
OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 25.6 ACRES,
MORE OR LESS.

AND

(NORTH PARCEL)

A PARCEL OF LAND BEING A PORTION OF THE WEST
HALF OF THE SOUTHWEST QUARTER (W1/2 SW1/4)
IN SECTION 28 AND A PORTION OF THE EAST HALF
OF THE SOUTHEAST QUARTER (E1/2 SE1/4) OF
SECTION 29, ALL IN TOWNSHIP 75 NORTH, RANGE 44
WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF
COUNCIL BLUFFS, POTTAWATTAMIE COUNTY,
IOWA, BEING MORE FULLY DESCRIBED AS
FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF AVENUE "B" AND THE EAST RIGHT-OF-WAY LINE OF THE COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE ALONG THE WESTERLY PROLONGATION OF SAID NORTH RIGHT-OF-WAY LINE, 895 FEET (MORE OR LESS) TO A POINT ON THE EAST HIGH BANK OF THE MISSOURI RIVER;

THENCE NORTHERLY, ALONG SAID EAST HIGH BANK, 1666 FEET (MORE OR LESS) TO A POINT ON THE WESTERLY PROLONGATION OF THE NORTH RIGHT-OF-WAY LINE OF AVENUE "G";

THENCE ALONG SAID WESTERLY PROLONGATION, SOUTH 88 DEGREES 34 MINUTES 53 SECONDS EAST, 1369 FEET (MORE OR LESS) TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF SAID COUNCIL BLUFFS MISSOURI RIVER LEVEE;

THENCE SOUTHWESTERLY, ALONG SAID EAST RIGHT-OF-WAY LINE, 1793 FEET (MORE OR LESS) TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 45.87 ACRES, MORE OR LESS.

Section 2: The taxes levied on the taxable property in the Amended Project Area, legally described in Section 1 hereof, by and for the benefit of the State of Iowa, City of Council Bluffs, County of Pottawattamie, Council Bluffs Community School District, and all other taxing districts from and after the effective date of this Ordinance shall be divided as hereinafter in this Ordinance provided.

Section 3: As to the Original Project Area, that portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts taxing property in the Original Project Area upon the total sum of the assessed value of the taxable property in the Original Project Area as shown on the assessment roll as of January 1, 2002, being the first day of the calendar year preceding the effective date of Ordinance No. 5766, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid. The taxes so determined shall be referred herein as the "base period taxes" for such area.

As to Amendment No. 1 Area, base period taxes shall be computed in the same manner using the total assessed value shown on the assessment roll as of January 1, 2004, being the assessment roll applicable to property in such area as of January 1 of the calendar year preceding the effective date of Ordinance No. 5859.

As to Amendment No. 2 Area, base period taxes shall be computed in the same manner using the total assessed value shown on the assessment roll as of January 1, 2008, being the assessment roll applicable to property in such area as of January 1 of the calendar year preceding the effective date of this Ordinance.

Section 4: That portion of the taxes each year in excess of the base period taxes for the Amended Project Area, determined for each sub-area thereof as provided in Section 3 of this Ordinance, shall be allocated to and when collected be paid into the special tax increment fund previously established by the City of Council Bluffs, State of Iowa, to pay the principal of and interest on loans, monies advanced to, or indebtedness, whether funded, refunded, assumed or otherwise, including bonds issued under authority of Section 403.9 or Section 403.12 of the Code of Iowa, incurred by the City of Council Bluffs, State of Iowa, to finance or refinance, in whole or in part, urban renewal projects undertaken within the Amended Project Area pursuant to the Urban Renewal Plan, as amended, except that taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to Section 298.2, but only to the extent authorized in Section 403.19(2), and taxes for payment of bonds and interest of each taxing district shall be collected against all taxable property within the Amended Project Area without any limitation as hereinabove provided.

Section 5: Unless or until the total assessed valuation of the taxable property in the areas of the Amended Project Area exceeds the total assessed value of the taxable property in the areas shown by the assessment rolls referred to in Section 3 of this Ordinance, all of the taxes levied and collected upon the taxable property in the Amended Project Area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes.

Section 6: At such time as the loans, monies advanced, bonds and interest thereon and indebtedness of the City of Council Bluffs, State of Iowa, referred to in Section 4 hereof have been paid, all monies thereafter received from taxes upon the taxable property in the Amended Project Area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

Section 7: All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. The provisions of this Ordinance are intended and shall be construed so as to continue the division of taxes from property within the Original Project Area and Amendment No. 1 Area under the provisions of Section 403.19

of the Code of Iowa, as authorized in Ordinance Nos. 5766 and 4859, and to fully implement the provisions of Section 403.19 of the Code of Iowa with respect to the division of taxes from property within the Amendment No. 2 Area as described above. In the event that any provision of this Ordinance shall be determined to be contrary to law it shall not affect other provisions or application of this Ordinance which shall at all times be construed to fully invoke the provisions of Section 403.19 of the Code of Iowa with reference to the Amended Project Area and the territory contained therein.

Section 8: This Ordinance shall be in effect after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2009.

Thomas P. Hanafan, Mayor

ATTEST:

Marcia L. Worden, Acting City Clerk

Read First Time: July 27, 2009 Vote for passage:

Read Second Time: August 10, 2009 Vote for passage:

Read Third Time: _____, 2009 Vote for passage:

PASSED AND APPROVED: _____, 2009

I, Marcia L. Worden, Acting City Clerk of the City of Council Bluffs, State of Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. _____ passed and approved by the City Council of the City at a meeting held _____, 2009, signed by the Mayor on _____, 2009, and published in the "Daily Nonpareil" on _____, 2009.

Marcia L. Worden, Acting City Clerk
City of Council Bluffs, State of Iowa

(SEAL)

DLILLEBO/ 624478.1 /MSWord10342.091

Council Communication

Department: Community Development		City Council: July 27, 2009 Planning Commission: July 14, 2009 First Reading: July 27, 2009 Second Reading: August 10, 2009 Third Reading:
Case No. ZC-09-005	Ordinance No. <u>6038</u>	
Applicant: Delilah L. Stogdill, et al and Community Development		
Subject Request of Delilah L. Stogdill, et al, 556 Frank Street, Council Bluffs, IA 51503, represented by Jack E. Ruesch, 25 Main Place, Ste 200, PO Box 248, Council Bluffs, IA 51502 to rezone 3506 – 2 nd Avenue (Lot 13, Block 24, Ferry Addition) from C-2 Commercial to R-3/Low Density Multi-Family Residential. The Community Development Department expanded the rezoning request to include 3510 – 2 nd Avenue (Lot 12) which abuts directly on the west.		
Background The above mentioned property is currently zoned C-2 Commercial and is the site of two single family structures. The prior owner of 3506 – 2 nd Avenue is deceased and the estate cannot sell the property because the purchaser cannot get financing due to the current C-2 zoning. The Community Development Department expanded the requested rezoning to include the property to the west (3510 – 2 nd Avenue). The R-3 designation is being requested because it is a natural extension of the existing R-3 zoning to the west. Land uses surrounding the subject properties include multi-family structures to the north and west, commercial uses to the east and south and single family residential to the southwest. Surrounding zoning is shown on the attached map. There has been no comment from LLEM Real Property, c/o Mark Mell, the owner of 3510 – 2 nd Avenue. One property owner within 200 feet requested additional information. No adverse comments have been received from any City department or utility.		
Discussion The requested rezoning is consistent with the Land Use map of the 1994 Comprehensive Plan which shows these properties as Multi-Family Residential and will bring two residential uses into compliance with the Zoning Ordinance.		
Recommendation The Community Development Department recommends rezoning Lots 12 and 13, Block 24, Ferry Addition from C-2 Commercial to R-3/Low Density Multi-Family Residential.		
Public Hearing Jack Ruesch, representing the applicants, appeared before the Planning Commission in favor of the request. No one appeared in opposition.		
Planning Commission Recommendation The Planning Commission recommends rezoning Lots 12 and 13, Block 24, Ferry Addition from C-2 Commercial to R-3/Low Density Multi-family Residential for the reasons cited in the staff report.		
VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 Motion: Carried		
Attachments: Map showing proposed rezoning area and surrounding zoning. Prepared By: Rebecca Sall, Planning Technician, Community Development Department		



CASE #ZC-09-005

ORDINANCE NO 6038

AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF COUNCIL BLUFFS, IOWA, AS ADOPTED BY REFERENCE IN SECTION 15.02.040 OF THE 2005 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY CHANGING THE DISTRICT DESIGNATION OF CERTAIN GROUNDS, PREMISES AND PROPERTY LOCATED AT 3506 2ND AVENUE AND 3510 2ND AVENUE FROM C-2/COMMERCIAL TO R-3/LOW DENSITY MULTI-FAMILY RESIDENTIAL, AS SET FORTH AND DEFINED IN CHAPTERS 15.15 AND 15.10 OF THE 2005 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.040 of the 2005 Municipal Code of the City of Council Bluffs, Iowa, be and the same is hereby amended by changing the district designation of certain grounds, property and premises located at 3506 2nd Avenue and 3510 2nd Avenue, legally described as follows:

Lots 12 and 13, Block 24, Ferry Addition, in Council Bluffs, Pottawattamie County, Iowa,

from its present designation as C-2/Commercial to R-3/Low Density Multi-Family Residential, as set forth and defined in Chapters 15.15 and 15.11 of the 2005 Municipal Code of Council Bluffs, Iowa.

SECTION 2. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. Effective Date. This ordinance shall be in full force and effect from and after its final passage, approval and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

THOMAS P. HANAFAN Mayor

Attest: _____
MARCIA L. WORDEN Acting City Clerk

FIRST CONSIDERATION: July 27, 2009
SECOND CONSIDERATION: August 10, 2009
PUBLIC HEARING: _____
THIRD CONSIDERATION: _____

Planning Case No. ZC-09-005

Council Communication

Department: Community Development Applicant: Crossroads of Western Iowa Case No. ZT-09-003	Ordinance No. <u>6039</u>	City Council: July 27, 09 Planning Commission Meeting: July 14, 09 First Reading: July 27, 09 Second Reading: Aug. 10, 09 Third Reading:
<div style="text-align: center;">Subject/Title</div> <p>Amend 15.03.271 'Family Home' of the Municipal Code (Zoning Ordinance) as follows:</p> <p>15.03.271 Family home. <i>A community-based residential home licensed:</i></p> <ol style="list-style-type: none"> 01. <i>as a residential care facility under Iowa Code Chapter 135C; or</i> 02. <i>as a child foster care facility under Iowa Code Chapter 237; or</i> 03. <i>as an elder family home under Iowa Code Chapter 231A; or</i> 04. <i>as an elder group home under Iowa Code Chapter 231B; or</i> 05. <i>as a residential care facility under Iowa Code Chapter 135C for not more than eight developmentally disabled persons and any necessary support personnel; or</i> 06. <i>as a child foster care facility licensed under Iowa Code Chapter 237 for not more than eight developmentally disabled children and any necessary support personnel; or</i> 07. <i>and designated under Iowa law as a 'family home'</i> 08. <i>Family home does not mean an individual foster care home licensed under Iowa Code Chapter 237. A family home shall be a permitted use in all residential zoning districts; however, new family homes owned and operated by public or private agencies shall not be located within contiguous city block areas. (Ord. 5222, Sec. 16, 6/12/95)</i> 09. <u><i>a residential home accredited and/or certified by the Iowa Department of Human Services, but not required to be licensed as a health care facility under Iowa Code 135C.6. The home shall provide care for not more than four individuals under a Home and Community Based Service (HCBS) waiver program for persons with mental retardation or other medical assistance programs provided for under Iowa Code Chapter 249A.</i></u> 		
<div style="text-align: center;">Background/Discussion</div> <p>The definition of 'Family Home' includes a variety of State licensed residential uses. The type of residential use operated by the Crossroads of Western Iowa is exempt from the licensing requirement of Iowa Code Section 135C. The use is regulated by the Iowa Department of Human Services and operates as a Home and Community Based Service (HCBS) waiver program. The program is for people with mental retardation or other medical assistance needs.</p> <p>The City definition of 'Family Home' does not include the activities exempted by Iowa Code Chapter 135C. The requested amendment would include such uses in the definition. 'Family Homes' are permitted in all residential zoning districts. The program operated by Crossroads of Western Iowa often rents a residential unit to at least two people at the same location. Multi-family uses are not permitted in all zoning districts which currently limits the locations within the community where Crossroads of Western Iowa can assist with residential needs. The amendment will allow persons served by the waiver program to live and work throughout the Council Bluffs community.</p>		

Recommendation

The Community Development Department recommends amending Title 15 of the Municipal Code (Zoning Ordinance) as follows:

15.03.271 'Family Home' –*A community-based residential home licensed:*

01. *as a residential care facility under Iowa Code Chapter 135C; or*
02. *as a child foster care facility under Iowa Code Chapter 237; or*
03. *as an elder family home under Iowa Code Chapter 231A; or*
04. *as an elder group home under Iowa Code Chapter 231B; or*
05. *as a residential care facility under Iowa Code Chapter 135C for not more than eight developmentally disabled persons and any necessary support personnel; or*
06. *as a child foster care facility licensed under Iowa Code Chapter 237 for not more than eight developmentally disabled children and any necessary support personnel; or*
07. *and designated under Iowa law as a 'family home'*
08. *Family home does not mean an individual foster care home licensed under Iowa Code Chapter 237. A family home shall be a permitted use in all residential zoning districts; however, new family homes owned and operated by public or private agencies shall not be located within contiguous city block areas. (Ord. 5222, Sec. 16, 6/12/95)*
09. *a residential home accredited and/or certified by the Iowa Department of Human Services, but not required to be licensed as a health care facility under Iowa Code 135C.6. The home shall provide care for not more than four individuals under a Home and Community Based Service (HCBS) waiver program for persons with mental retardation or other medical assistance programs provided for under Iowa Code Chapter 249A.*

Public Hearing

The following appeared before the Planning Commission in favor of the request: representing Crossroads of Western Iowa, Brent Dillinger, CEO, 1529 9th Avenue, Council Bluffs, IA 51501; Amy Ebsen, 302 Riordan Street, Crescent, IA 51526; Kim Coffelt, 101 Helen Avenue, Council Bluffs, IA 51503; Mike Kenealy, 2922 Eagle Ridge Drive, Missouri Valley, IA 51555. No one appeared in opposition.

Planning Commission Recommendation

The Planning Commission recommends amending §15.03.271 the definition of 'Family Home' of the Municipal Code (Zoning Ordinance) by adding a new 09., as presented above.

VOTE: AYE 9 NAY 0 ABSTAIN 0 ABSENT 2 Motion: Carried

Prepared by: Rose E. Brown, Urban Planner

ORDINANCE NO. 6039

AN ORDINANCE to amend Chapter 15.03 "Definitions" of the 2005 Municipal Code of Council Bluffs, Iowa, by amending Section 15.03.271 "Family Home".

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 15.03 "Definitions" of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing Section 15.03.271, "Family Home" and by enacting a new Section 15.03.271, "Family Home", to read as follows:

- "15.03.271 Family home.** A community-based residential home licensed:
- (1) as a residential care facility under Iowa Code Chapter 135C; or
 - (2) as a child foster care facility under Iowa Chapter 237; or
 - (3) as an elder family home under Iowa Code Chapter 231A; or
 - (4) as an elder group home under Iowa Code Chapter 231B; or
 - (5) as a residential care facility under Iowa Code Chapter 135C for not more than eight developmentally disabled persons and any necessary support personnel; or
 - (6) as a child foster care facility licensed under Iowa Code Chapter 237 for not more than eight developmentally disabled children and any necessary support personnel; or
 - (7) and designated under Iowa law as a 'family home'.
 - (8) Family home does not mean an individual foster care home licensed under Iowa Code Chapter 237. A family home shall be a permitted use in all residential zoning districts; however, new family homes owned and operated by public or private agencies shall not be located within contiguous city block areas;
 - (9) a residential home accredited and/or certified by the Iowa Department of Human Services, but not required to be licensed as a health care facility under Iowa Code 135C.6. The home shall provide care for not more than four individuals under a Home and Community Based Service (HCBS) waiver program for persons with mental retardation or other medical assistance programs provided for under Iowa Code Chapter 249A.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ord. 5222 § 16, 1995.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable

from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

THOMAS P. HANAFAN Mayor

Attest:

MARCIA L. WORDEN Acting City Clerk

First Consideration: July 27, 2009
Second Consideration: August 10, 2009
Public Hearing: _____
Third Consideration: _____

Planning Case ZT-09-003

Council Communication

Department: Legal	Ordinance No. Resolution No. _____	First Reading Second Reading Third Reading _____
Case/Project No.		
Applicant.		
SUBJECT/TITLE		
<p>AN ORDINANCE to amend Chapter 3.08 "Beer and Liquor Control" of the 2005 Municipal Code of Council Bluffs, Iowa, by amending Section 3.08.045 "Exceptions to Section 3.08.040(5)", to include areas zoned as C-3, and to allow amplified music between the hours of 7:00 a.m. and 10:00 p.m., with restrictions.</p>		
BACKGROUND		
<p>An ordinance is being proposed that would amend Section 3.08.045 to allow open air dining in areas zoned C-3 that meet all other requirements set forth in the section. The proposed amendment would also allow amplified music between the hours of 7:00 a.m. and 10:00 p.m. that complies with sound levels specified in Section 4.50.080(8). The ordinance also provides for suspension of the service of alcohol in open air dining areas if convicted of violating Chapter 4.50 three times in a 12-month period.</p> <p>This change is being requested to accommodate a new business that will be located at 805 S. Main Street.</p>		
RECOMMENDATION		
<p>Approve the ordinance as proposed.</p>		

Richard Wade

Department Head Signature

Mayor Signature

ORDINANCE NO. _____

AN ORDINANCE to amend Chapter 3.08 “Beer and Liquor Control” of the 2005 Municipal Code of Council Bluffs, Iowa, by amending Section 3.08.045 “Exceptions to Section 3.08.040(5)”, to include areas zoned as C-3, and to allow amplified music between the hours of 7:00 a.m. and 10:00 p.m., with restrictions.

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

SECTION 1. That Chapter 3.08 “Beer and Liquor Control” of the 2005 Municipal Code of Council Bluffs, Iowa, be and the same is hereby amended by repealing and reenacting Section 3.08.045 “Exceptions to Section 3.08.040(5)”, to read as follows:

“3.08.045 Exceptions to Section 3.08.040(5). (a) Open-air Dining—Exception. If an applicant can establish that approximately fifty (50) percent of its gross revenue from items to be consumed on premise are derived, or are likely to be derived from the sale of nonalcoholic food items, and if the establishment is or is to be located in an area zoned C-4, C-3, or in an area zoned C-2 and is not within fifty (50) feet of a residential zone, or a nonresidential area other than C-4 or C-2, and is not within three hundred (300) feet of a residential use or zone. The restrictions established in Section 3.08.040(5) of this chapter, need not apply to the entire premises if the conditions listed above are met. For that portion of the premises which the applicant wishes to exclude from such restrictions, the following restrictions must be complied with:

- (1) It must be so enclosed so that it may only be entered from that portion of the premises which is in compliance with Section 3.08.040(5) of this chapter.
- (2) All exits from such area shall be for emergency use only and shall be equipped with the appropriate hardware to ensure such limited use.
- (3) No amplified music shall be permitted in such area between the hours of 10:00 p.m. and 7:00 a.m. Amplified music will be permitted in such areas between the hours of 7:00 a.m. and 10:00 p.m., so long as it complies with sound levels specified in Section 4.50.080(8). Special sound variances pursuant to Section 4.50.080(7.2) may be granted. If any outdoor dining facility is convicted of violating Chapter 4.50 three times in a twelve (12) month period, the service of alcoholic beverages in such area shall be suspended for a 12 month period.
- (4) No live dancing, such as go-go dancing, strip tease acts or exotic dancing shall be permitted in such area.

(5) Such area must be approved by the health department for open-air dining.

(6) Outdoor dining facilities in C-2 zones shall not allow alcohol sales or consumption in their outdoor areas between the hours of twelve midnight and six a.m.

(7) If the application is for an establishment in a C-2 zone, the applicant shall have the duty to notify all property owners within three hundred (300) feet of the premises to be licensed. This notice shall be given in the following fashion: (A) applicant shall establish a list of parties to be notified through utilization of the records of the county auditor; (B) applicant shall prepare envelopes addressed to each of the parties identified in subsection (a)(7)(A) of this section, with the appropriate postage for certified delivery affixed thereto; (C) applicant shall prepare a notice for each of such property owners, advising of the nature of the action which is being sought, including the date it is to be acted upon by the city council; (D) applicant shall deliver all of the above to the city clerk at least ten (10) days prior to the date at which the action is proposed to be taken; (E) it shall be the duty of the city clerk to insert the notices into the envelopes and deliver same to the post office within forty-eight (48) hours of receipt.

(b) Golf-courses—Exception. The restrictions established in Section 3.08.040(5) of this chapter shall not apply to golf courses consisting of fifteen (15) acres or more.

(c) Stadium-type Activities—Exception. For the purpose of this section, a stadium-type activity is a sporting event to which there is controlled access and paid admission. It shall only be permitted in areas zoned nonresidential and shall not be permitted within three hundred (300) feet of a residential use or zone. The restrictions established in Section 3.08.040(5) of this chapter, need not apply to the entire premises if the conditions listed above are met. For that portion of the premises which the applicant wishes to exclude from such restrictions, the following restrictions must be complied with:

(1) It must be enclosed by a fence or a wall at least six feet high.

(2) It must be enclosed so that it may only be entered from that portion of the premises which is in compliance with Section 3.08.040(5) of this chapter.

(3) All exits from such area shall be for emergency use only and shall be equipped with the appropriate hardware to ensure such limited use.

(4) No amplified music shall be permitted in such area.

(5) No live dancing, such as go-go dancing, strip tease acts or exotic dancing shall be permitted in such area.

(d) Special Events—Exception. The restrictions established in Section 3.08.040(5) of this chapter shall not apply to special events as long as they are not held within five hundred (500) feet of a residential use. For purposes of this exception, a special event shall last a

maximum of seventy-two (72) hours, and the applicant and location shall only be permitted this exception once annually. This special event exception shall only be permitted if the following restrictions are satisfied:

(1) The applicant has developed a plan to address crowd and traffic control at the special event which has been approved by the chief of police. This approval shall not be unreasonably denied and, if an applicant's plan is denied, he/she may appeal such denial to the city council by filing with the city clerk a written notice of appeal within ten (10) days of the chief's denial of such plan;

(2) The applicant has developed a plan to comply with state and city health codes which has been approved by the city's director of public health. This approval shall not be unreasonably denied and, if an applicant's plan is denied, he/she may appeal such denial to the city council, as long as notice of such appeal is presented in writing to the city clerk within ten (10) days of the date upon which the director denied such plan;

(3) Premises authorized under this exception shall not be permitted to operate between the hours of twelve midnight and six a.m.;

(4) Applicant's failure to abide by any of these restrictions and the plans approved herein or any other city or state law governing the sale and/or dispensing of alcoholic beverages shall be grounds for the immediate cessation of a special event exception.

(e) PC and A-3—Exception. The restrictions established in Section 3.08.040(5) of this chapter shall not apply to liquor license establishments which are located in either a PC or an A-3 zone as long as the following criteria have been met:

(1) The licensed premises is not within five hundred (500) feet of a residential zone.

(2) Access to the licensed premises is restricted.

(f) For purposes of this section, when determining the distance from a residential use or zone, it will be measured from the property line of the residential use or zone to the actual licensed premises.

(g) For purposes of this section, nonresidential zones shall include those zones for which a residential dwelling is not a principal use.

SECTION 2. REPEALER. All ordinances or parts or ordinances in conflict with the provisions of this ordinance are hereby repealed. This is Ordinance No. (Ord. 5882 § 1, 2006).

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are

severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage, approval and publication, as by law provided.

PASSED
AND _____, 2009
APPROVED

THOMAS P. HANAFAN Mayor

Attest:

MARCIA L. WORDEN City Clerk

First Consideration: _____

Second Consideration: _____

Public Hearing: _____

Third Consideration: _____

COUNCIL COMMUNICATION

Department: Public Works Ordinance No. _____ First Reading August 24, 2009
Case/Project No.: _____ Resolution No. 09-251
Applicant: Greg Reeder, Public Works Director

SUBJECT/TITLE

Council consideration of a resolution authorizing the Mayor to execute an Iowa Department of Transportation Cooperative Agreement No. 2009-6-185 with the Iowa Department of Transportation and Iowa West Foundation for the US 6 Broadway Viaduct Replacement Project No. BRF-6-1(113)—38-78.

BACKGROUND/DISCUSSION

- IDOT has programmed the replacement of the Broadway Viaduct starting in Spring, 2010.
- Iowa West Foundation has proposed to add artwork and aesthetics to the project. The work includes a sculpture at pier #5 and aesthetic poles on each side of the bridge from end to end.
- The IDOT will design, let, and inspect the viaduct project. IDOT will maintain the roadway and structure.
- The IWF will have the sculpture built and erected after the viaduct is completed in Fall, 2011. IWF will pay IDOT \$500,000 for aesthetic components including the aesthetic poles. Any costs over that amount will be funded by IDOT. IWF will own and maintain the sculpture. (Paragraph 3 of the agreement).
- IWF will reimburse the city for 75% of the cost to maintain the aesthetic poles and 75% of the energy costs for operation of the lighting in these poles. The city will pay the remaining 25% of each cost. (Paragraph 5 I).
- The city is 100% responsible for street lighting maintenance and energy costs on the viaduct. This is by state code.
- The city will reimburse IDOT for sanitary sewer and water main fixture adjustments (\$11,027 and \$6,786 respectively). The Council Bluffs Water Works will reimburse the city for the water main adjustments. (Paragraph 12).
- The city will permanently close certain frontage roads:
 - 1.) No. Frontage Rd.: 15th Street to 14th Street
 - 2.) So. Frontage Rd.: 8th Street to 10th Street
 - 3.) So. Frontage Rd.: 13th Street to 12th Street
- The city will pay for the proportionate share of storm sewer (by Iowa Code IDOT only pays for drainage necessary for state Right-of-Way. Some of the storm sewer drains additional areas). The city's share is estimated at \$27,068, 10.9% of total. (Paragraph 18).

RECOMMENDATION

Approval of this resolution.

STAFF ACTION NO: _____

COOPERATIVE AGREEMENT

County	<u>Pottawattamie</u>
City	<u>Council Bluffs</u>
	<u>Iowa West Foundation</u>
Project No.	<u>BRF-6-1(113)-38-78</u>
Iowa DOT	
Agreement No.	<u>2009-6-185</u>

This Agreement ("Agreement"), is entered into by and between the Iowa Department of Transportation, (hereinafter "DOT"); the Iowa West Foundation, an Iowa non-profit corporation (hereafter the "FOUNDATION"); and the City of Council Bluffs, Iowa, (hereafter "CITY") in accordance with 761 Iowa Administrative Code Chapter 150 and Iowa Code sections 28E.12 and 306A;

WITNESSETH; that

WHEREAS, the DOT proposes to establish or improve an extension of U.S. Primary Highway No. 6 within Pottawattamie County, Iowa, including construction of a new viaduct (hereinafter the "Viaduct") within the CITY; and

WHEREAS, the FOUNDATION, in joint cooperation with the DOT and CITY, proposes to add certain artwork to the Viaduct being constructed by DOT, consisting of a gateway-type sculpture and related facilities (hereafter the "Sculpture") as hereinafter described; and

WHEREAS, the DOT, CITY and FOUNDATION are willing to jointly participate in said project, in the manner hereinafter provided; and

WHEREAS, this Agreement reflects the current concept of this project which is subject to modification by mutual agreement of the parties hereto; and

NOW, THEREFORE, IT IS AGREED as follows:

1. The DOT will design, let and inspect construction of the following described project in accordance with this Agreement, the project plans and DOT standard specifications:

The U.S. 6 Broadway Viaduct will be replaced from 15th Street easterly to near 9th Street. The Viaduct will be 74-feet 2-inches wide and will include a 10-foot sidewalk/trail. The project provides for construction in two stages. The first phase will

shift the eastbound traffic to the westbound lanes while the new eastbound lanes of the Viaduct are being constructed. Phase 2 provides for the eastbound traffic to be returned to the new eastbound lanes while work begins on the new westbound lanes. The westbound traffic will be detoured for the duration of the project.

2. As part of the Viaduct project, and subject to the terms and conditions hereof, the Sculpture will be installed and attached to the Viaduct at Pier #5. Multiple aesthetic poles not a part of the Sculpture (hereafter "Aesthetic Poles") will also be placed on each side of the bridge from end to end, some of which poles will also have roadway lighting fixtures.
3. By separate agreement, the FOUNDATION has contracted with Ed Carpenter of Portland, Oregon (hereafter "Carpenter") to design, fabricate and install the Sculpture, with the FOUNDATION paying for all such design, fabrication and installation work. The FOUNDATION further agrees to reimburse the DOT up to a maximum amount of \$500,000 for the design, fabrication and installation of the Aesthetic Poles to be designed by Carpenter. Such Aesthetic Poles will be acquired and installed by the DOT.
4. Unless earlier terminated as herein provided, the initial term of this Agreement shall be twenty-five (25) years, and thereafter, the term shall automatically extend for additional terms of one (1) year each, unless either DOT or FOUNDATION gives notice to the other and to the CITY, at least ninety (90) days prior to the end of the then current term, that the Agreement shall terminate at the end of the then current term, provided that FOUNDATION shall have a reasonable time after the termination or expiration of the term of this Agreement to allow for removal of the Sculpture. Upon expiration or termination of the term of this Agreement, FOUNDATION shall remove the Sculpture from the Viaduct. Other than removal of the Sculpture, the FOUNDATION shall have no obligation to remove any other improvements installed on the Viaduct.
5. During the term of the Agreement, the FOUNDATION shall:
 - A. require Carpenter to retain an Iowa-licensed engineering consultant to provide engineering services for the Sculpture on the Viaduct (including the design and engineering of the connection details); and
 - B. pay all costs for acquisition and installation of the Sculpture, including all costs for the design fabrication and installation by Carpenter; and
 - C. contract with Carpenter for the design and installation of all lighting for the Sculpture and pay all costs associated therewith. Such lighting shall include the light fixtures and wiring of the fixtures to a junction box adjacent to the fixture; and
 - D. provide all plans, specifications and construction documents for the Sculpture to the

CITY and DOT for their review and approval prior to the start of any construction or installation activities, which approval will not be unreasonably withheld. Such review by the CITY and DOT shall be for the limited purpose of approving the engineering plans, the structural soundness of Sculpture and connection devices, the location of the Sculpture on the Viaduct and safety of the installation and not as to the aesthetics of the Sculpture. The CITY and DOT will be allowed a 60-day period for their review and approval of the plans and specifications, which approval shall not be unreasonably withheld or delayed. If any deficiencies are found during the review period, the FOUNDATION shall cause the plans to be modified and re-submit the plans and specifications. In such event, the 60-day period will restart with the submission of the revised documents; and

- E. obtain all necessary permits required for the installation of the Sculpture. The DOT and the CITY acknowledge that the FOUNDATION will contract for the design and fabrication of the Sculpture well in advance of the installation thereof, and will issue such permits at the time the FOUNDATION submits the necessary permit applications to the CITY and the DOT and the CITY and DOT approve the applications. The DOT will require a special permit to occupy the right of way and a Work on Right of Way Permit any time the FOUNDATION wishes to enter the right of way to do any work, including removal; and
- F. retain ownership of the Sculpture at all times; and
- G. maintain at its cost the Sculpture installed pursuant to this Agreement in good repair at all times that such Sculpture is installed on the Viaduct pursuant to this Agreement, all without cost to the DOT or CITY, provided, however, that this maintenance obligation shall not require the FOUNDATION to repair the Sculpture that is damaged beyond reasonable repair by casualty or any other cause, and provided further, however, that in the event the Sculpture is damaged by the negligent act or omission of DOT or the CITY, or any of their respective employees, agents or contractors, DOT or CITY, as applicable, shall be responsible for all costs incurred by FOUNDATION to repair such damage. Sculpture damaged beyond repair may be removed by the FOUNDATION as provided in Paragraph 5.H. hereof; and
- H. have the right to remove the Sculpture from public display if the FOUNDATION reasonably believes is in danger of loss, damage or theft or that presents, in the reasonable judgment of the FOUNDATION or the DOT, a risk of injury to the public or a risk to public safety. If so removed, and provided this Agreement is still in effect, the Sculpture may be returned by FOUNDATION to public display at such location when the FOUNDATION is reasonably assured that such risk is no longer present or may be permanently removed from public display by FOUNDATION; and

- I. so long as the Aesthetic Poles are installed on the Viaduct, to reimburse the CITY for seventy-five percent (75%) of the cost of maintenance and painting of the Aesthetic Poles and seventy-five percent (75%) of the energy charges for operation of the lighting on the Aesthetic Poles.
6. During the term of this Agreement the DOT shall:
 - A. design and construct the Viaduct to accommodate the proposed Sculpture based upon engineering information provided by Carpenter's engineer, including the installation of the embedded connecting devices specified by Carpenter to connect the Sculpture to the Viaduct. The FOUNDATION will keep the Sculpture within the allowable loads provided for by the design by the DOT; and
 - B. be responsible for installation of the junction boxes and for bringing the electrical supply to the junction boxes adjacent to the light fixtures for the Sculpture; and
 - C. be responsible for the cost of purchase and installation of all of the Aesthetic Poles (including all electrical connections), subject to reimbursement by the FOUNDATION up to a maximum amount of \$500,000. The DOT shall cooperate with Carpenter, who will design the Aesthetic Poles to complement the Sculpture. The DOT will cause the Aesthetic Poles to be fabricated in accordance with such design and to be installed on the Viaduct; and
 - D. own the Aesthetic Poles. The DOT and CITY agree that they will keep such Aesthetic Poles installed on the Viaduct so long as the Sculpture is maintained thereon; and
 - E. be responsible for the maintenance of the fences installed on both sides of the Viaduct.
 7. During the term of this Agreement the CITY shall:
 - A. so long as the Sculpture remains on the Viaduct, maintain at its cost, the Aesthetic Poles in good condition and repair, including the periodic painting thereof in colors matching the colors of the Aesthetic Poles at the time of installation. The CITY will repair or replace any Aesthetic Poles that are damaged from time to time as necessary to keep all Aesthetic Poles in good condition and repair. During the term of this Agreement, the CITY may invoice the FOUNDATION periodically for seventy-five percent (75%) of the reasonable cost of such maintenance; and
 - B. be responsible for twenty-five percent (25%) of the cost of electrical service for lighting on the Aesthetic Poles. The CITY shall pay for all such electrical service in the first instance and shall periodically invoice the FOUNDATION for its seventy-five percent (75%) portion of the cost of the electrical service.

8. Subject to the terms and conditions of this Agreement, the FOUNDATION will contract with Carpenter for the fabrication and installation of the Sculpture on the Viaduct. The Sculpture and the installation thereof will be in accordance with the Carpenter contract, this Agreement and with the approved project plans and DOT standard specifications.
9. During the term of this Agreement, the CITY shall take official action to concur with the installation of the structures along their U.S. 6 corridor. Such action will be taken before the FOUNDATION contracts for the fabrication and installation of the Sculpture.
10. Except for those costs allocated to the CITY and the DOT under the terms of this Agreement, the FOUNDATION will bear all costs for acquisition and installation of the Sculpture without any reimbursement from the CITY or DOT.
11. Upon completion of construction, the CITY agrees to accept ownership and jurisdiction of the following referenced improvements located within CITY jurisdiction as well as any drainage structures located outside of the primary highway right of way limits and which were constructed as part of said improvement (if any). The CITY shall also assume responsibility for all future maintenance operations associated therewith, all at no additional expense or obligation to the DOT:
 - A. The frontage road just east of 12th street (Sta. to 37+10 to 38+73) will be modified. The existing road width will be reduced from 24-foot to 22-foot and a 6-inch curb and gutter will be constructed along the north side of the frontage road.
 - B. The south frontage road from 10th Street to 11th Street (Sta. 40+70 to 44+60) will be modified. The existing road width will be reduced to 22-foot back-to-back of curb and reconstructed full width.
 - C. Mid City Trail will be constructed on the north side of the Viaduct near 15th Street (Sta. 25+90). The trail will loop back to the east on the former frontage road between 15th Street and 14th Street thence north on 14th Street (Sta. 29+10).
 - D. An existing sidewalk system along the north side of U.S. 6 will be improved. Sidewalk will be replaced 10-feet wide from the bridge landing to the park located near 8th Street (Sta. 49+40 to 51+80). Sections of sidewalk at 15th Street (Sta. 25+43) will be replaced with intersection improvements. Sidewalk curb ramps will be reconstructed along the corridor where incidental to frontage road reconstruction or to meet ADA standards. Unless noted otherwise, sidewalks will be a minimum of 5-feet wide.
 - E. The Sculpture will be installed and attached to the Viaduct at Pier #5 by Carpenter pursuant to a contract with the FOUNDATION.

12. As part of the project, the CITY has requested adjustment of fixtures (manholes and water valves) within the city all at no cost to the DOT (see Exhibit A for locations). Below is a list of the estimated quantities for the CITY reimbursable items:

Estimated Quantities

13 manholes	\$11,027.64
8 water valves	\$6,786.24
Estimated Total (100% CITY)	\$17,813.88

Special Provisions

13. The CITY and DOT have previously entered into Agreement 2009-6-184 for a detour for the above referenced project signed by the CITY and DOT on June 1 and June 3, 2009 respectively.
14. U.S. 6 through-traffic will be detoured off of the project during the bridge construction. The CITY will take appropriate action to authorize the DOT to erect and maintain signs, consistent with Part VI of the "Manual on Uniform Traffic Control Devices", as necessary to direct traffic to and along said detour route during the construction period. The DOT will also remove said signs when the detour is discontinued. Details will be shown on the traffic control sheet(s) within the project plans.
15. The CITY shall allow the DOT and or its contractor to access and work from the frontage road (Lower Broadway) during construction. The DOT shall make all necessary repairs to said frontage road at no cost to the CITY including:
- A. The frontage road on the south side of U.S. 6 from 13th Street to 15th street will be replaced full-width (Sta. 25+74 to 32+00). A minimum of 20-foot clear from face-of-barrier to back-of-curb will be provided for one-way traffic and on-street parking.
- B. The frontage road on the north side of U.S. 6 between 13th Street and 14th Street (Sta. 28+91 to 32+34) will be replaced to the existing centerline of the frontage road a distance of approximately 10 feet from the new retaining wall face.
16. The transite pipe containing asbestos will be removed with the Viaduct project under the DOT's contract.
17. The CITY in accordance with Iowa Code sections 306.10 through 306.17 will hold a public hearing for the permanent closure and removal of frontage roads caused by construction of this project. Said frontage roads to be closed and removed are from 14th Street to 15th Street

on the north side of U.S. 6 (Sta. 25+60 to 28+90); from 8th street to 10th street on the south side of U.S. 6 (Sta. 45+00 to 50+97); and 13th Street to 12th Street on the south side of U.S. 6 (Sta. 33+20 to 36+80). The hearing proceedings will be conducted by the CITY who will also be responsible for payment of claims for any and all damages (if any) resulting from the road closure proceedings, all at no expense or obligation to the DOT. The DOT will re-seed the areas where the frontage roads are removed.

The DOT will furnish and install the required road closure barricades at project cost. Upon completion of construction, the CITY agrees to accept ownership of said barricades along with responsibility for future maintenance operations associated therewith all at no additional expense or obligation to the DOT.

18. In accordance with 761 Iowa Administrative Code Chapter 150.3(1)d, the CITY will reimburse the DOT for 10.9 percent of the actual cost for longitudinal and outlet storm sewer as shown by project records.

The cost of the total longitudinal and outlet storm sewer installation is estimated to be \$248,313.09. (\$221,244.19 DOT and \$27,068.90 CITY.)

Payment by the CITY will be made upon completion of the project and proper billing by the DOT.

Below is a list of the estimated quantities for the said storm sewer:

Estimated Quantities

1957 LF, SWR 1500D Storm, 15"
142 LF, SWR, 2000D Storm, 15"
4 EA, Intake RA-40
1 EA, Intake RA-43
1 EA, Barrier Intake, RA-48A
7 EA, Storm SWR, Utility Access RA-50
24 EA, Intake RA-63 Modified
5 EA, Intake RA-63
3 EA, Intake RA-70
1 EA, Trench Drain System
17 EA, RMVL of Intake + Utility Access
723 LF, RMV Storm SWR Pipe LE 36"
Total Estimated Cost \$248,313.09 (10.9% CITY)

19. CITY reimbursement estimated at \$44,882.78 (\$17,813.88 fixtures + \$27,068.90 storm sewer) will be made upon completion of construction and proper billing by the DOT and will

be determined by the actual quantities in place and the accepted bid at the contract letting.

20. If the CITY has completed a Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the FIS is modified, amended or revised in an area affected by the project after the date of this Agreement, the CITY shall promptly provide notice of the modification, amendment or revision to the DOT. If the CITY does not have a detailed Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the CITY does adopt an FIS in an area affected by the project after the date of this Agreement, the CITY shall promptly provide notice of the FIS to the DOT.

General Provisions

21. The DOT will bear all costs except those allocated to the CITY and FOUNDATION under other terms of this Agreement.
22. The CITY, in cooperation with the DOT, will take whatever steps may be required to legally establish the grade lines of the new highway facilities constructed under the project in accordance with Iowa Code sections 313.21 and 364.15.
23. Upon completion of the installation of the Sculpture, no changes in the physical features of the Sculpture or Aesthetic Poles will be undertaken or permitted without the prior written agreement of the DOT, the CITY, the FOUNDATION and the artist creating the Sculpture (if the artist is given the right to approve any such changes in the artist's agreement with the FOUNDATION), other than the FOUNDATION removal rights pursuant to Paragraphs 4, 5.H. and 24 hereof, which removal shall not require such consent.
24. During the term of this Agreement the Sculpture and Aesthetic Poles shall not be moved, relocated or removed by the DOT or the CITY from the Viaduct unless expressly permitted by this Agreement. In the event the DOT reasonably determines that relocation and/or removal of the Sculpture is necessitated by future improvements, re-construction or maintenance of the Viaduct, to protect them from damage, or reasonably necessary due to considerations of public safety, the DOT will notify the FOUNDATION in writing and upon receipt thereof, the FOUNDATION shall remove the Sculpture. If relocation of the Sculpture becomes necessary as permitted by this Agreement, the DOT, the CITY and the FOUNDATION shall attempt to agree upon a new site for the Sculpture. Any relocation shall be subject to the rights of Artist and FOUNDATION under any agreement executed by FOUNDATION and the artist creating the Sculpture regarding the relocation of the Sculpture, any relocation thereof and the artist's rights with respect thereto. If DOT, the CITY, the FOUNDATION and the artist (if the artist's consent is required by the artist's agreement) cannot agree upon a new location for display of the Sculpture, or if the Sculpture, in the reasonable judgment of FOUNDATION, cannot be safely displayed, the FOUNDATION may remove the Sculpture. All reasonable costs associated with the removal

and relocation of the Sculpture shall be borne by the FOUNDATION.

25. The CITY shall be responsible for all energy and maintenance costs for the lighting of the Sculpture so long as the Sculpture is installed on the Viaduct.
26. In the event the FOUNDATION fails or refuses to perform any duty or obligation hereunder, and such default continues for thirty (30) days after receipt of written notice thereof from the DOT, the DOT may terminate this agreement hereunder, provided, however, if the default cannot, with reasonable diligence, be cured in such thirty (30) day period, the FOUNDATION shall have a reasonable time to cure such default provided that the FOUNDATION commences such cure within such thirty (30) day period and pursues the cure with diligence.
27. Nothing stated herein shall be deemed to convey any ownership, right or interest in the Sculpture to the DOT or the CITY. All right, title and interest in the Sculpture shall at all times remain in the FOUNDATION.
28. As part of the project, it may be necessary to temporarily close various local CITY streets and/or alleys during portions of said project. If temporary closures are necessary, the DOT will furnish and install the required road closure barricades and signing at project cost and shall remove same upon completion of the project also at no expense or obligation to the CITY. The DOT will work in close cooperation with the CITY and the contractor to accommodate fire protection and local access across the project during construction.
29. The DOT will temporarily close the highway project area by formal resolution in accord with Iowa Code section 306.41.
30. In the event this project is financed with federal funds, the CITY will take whatever action may be necessary to comply with applicable federal laws and regulations which includes but is not limited to Title 23 CFR (Code of Federal Regulations).
31. Future maintenance of the primary highway within the project area will be carried out in accordance with the terms and conditions contained in 761 Iowa Administrative Code Chapter 150 and in accordance with this Agreement.
32. Traffic signal construction which may be accomplished (within this project area) as part of or incident to this project shall be provided under guidelines established in 761 Iowa Administrative Code Chapter 150. The DOT shall construct traffic signal installations all at no cost to the CITY. The CITY shall accept ownership of and responsibility for future energy and maintenance costs of said traffic signals.
33. New lighting installed as part of this project shall be provided pursuant to the terms of this

Agreement. The CITY shall accept ownership of the lighting units and responsibility for future energy and maintenance costs for lighting the Viaduct. If the Sculpture is removed pursuant to the terms of this Agreement, the CITY shall retain responsibility for maintenance costs of the Viaduct lighting units.

34. Any costs incurred by the CITY in performing its obligations hereunder will be borne exclusively by the CITY without reimbursement by the DOT.
35. Subject to the provisions hereof, the CITY in accordance with 761 Iowa Administrative Code sections 150.3(1)c and 150.4(2) will remove or cause to be removed (within the CITY project limits) all encroachments or obstructions in the existing primary highway right of way. The CITY will also prevent the erection and/or placement of any structure or obstruction on said right of way or any additional right of way which is acquired for this project including but not limited to private signs, buildings, pumps, and parking areas.
36. Subject to the approval of and without expense to the DOT, the CITY agrees to perform or cause to be performed all relocations, alterations, adjustments or removals of existing utility facilities within the CITY, including but are not limited to power, telephone lines, fiber optics lines, natural gas pipelines, water mains and hydrants, curb boxes, utility accesses, storm water intakes, sanitary sewers, and related poles, installations and appurtenances, whether privately or publicly owned, and all parking meters, traffic signals and other facilities or obstructions which are located within the limits of an established street or alley and which will interfere with construction of the project and the clear zone, as provided in Chapter 761 Iowa Administrative Code section 150.4(5) and in accordance with the Utility Accommodation Policy of the DOT referenced therein.
37. With the exception of service connections no new or future utility occupancy of project right of way, nor any future relocations of or alterations to existing utilities within said right of way (except service connections), will be permitted or undertaken by the CITY without the prior written approval of the DOT. All work will be performed in accordance with the Utility Accommodation Policy and other applicable requirements of the DOT.
38. All storm sewers constructed by the DOT as a part of the project will become the property of the CITY, which will be responsible for their maintenance and operations. The CITY will not make any connections to said storm sewers without the prior written approval of the DOT. The CITY will prevent use of such storm sewers as a sanitary sewer.
39. The CITY shall be responsible for providing, without cost to the DOT, any right of way for the project which involves dedicated streets or alleys, and any other city-owned lands, except park land, which are required for the project subject to the condition that the DOT shall reimburse the CITY for the value of improvements situated on such other city-owned lands. The CITY has apprised itself of the value of these lands, and as a portion of their

participation in the project, voluntarily agrees to make such lands available without further compensation. The DOT shall be responsible for acquisition of all other right of way.

40. In connection with this project any real estate and rights to real estate necessary for right of way at the connection of any city street or alley and a primary highway relocation or reconstruction project, any access road or frontage road right of way if any, and any permanent utility easements which are or which will be under the jurisdiction of the city may be acquired by the DOT, for and in the name of the CITY. Where acquired by contract the CITY will receive title from the contract seller and the CITY will accept title thereto. Where acquired by condemnation, a single joint condemnation proceeding will be instituted by the DOT to acquire real estate or rights in real estate needed by the CITY for the CITY and to acquire real estate or rights in real estate needed by the DOT for the DOT.
41. Access rights may be acquired by the DOT along all city street intersections within the project limits. Access rights, if acquired, will be in the name of the State of Iowa. The acquisition of access rights will be in accordance with 761 Iowa Administrative Code Chapter 112.11(8) and the 2005 DOT Access Control regulations.

If the CITY feels that it is in the best interest of the parties involved to modify the access rights in any way, they may petition the DOT District 4 Engineer to do so.

42. Structures built by the DOT over or under a primary road extension will be maintained structurally sound by the DOT, including repairs to floors and railing and painting. For structures serving roadways which are not on the primary road extension system, the cleaning and removal of snow, debris and foreign objects from City side street traffic lanes, sidewalks or walkways within the project limits including pedestrian overpasses or underpasses and those associated with bridges both overpasses and underpasses will be the responsibility of the CITY.
43. The CITY will comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring affirmative action to assure equal employment opportunity as required by Iowa Code Chapter 216. No person will, on the grounds of age, race, creed, sex, color, national origin, religion or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which State funds are used.
44. At all times while the Sculpture is publicly displayed on the Viaduct pursuant to this Agreement, the FOUNDATION agrees to maintain a policy or policies of commercial general liability insurance, with coverage limits of at least \$1,000,000, combined single limit for bodily injury and property damage, covering the Sculpture. The FOUNDATION agrees to defend, indemnify and hold harmless the DOT and the CITY and their respective employees and agents from any and all loss, damage or claims, including attorney's fees, arising from

any bodily injury or property damage caused by or arising out of the installation or maintenance of the Sculpture by the FOUNDATION.

45. The FOUNDATION shall furnish the DOT and CITY with an appropriate certificate or copy of the current liability insurance policy that is referred to in Paragraph 44 above. Said policy must specifically include the DOT and CITY as additional insured parties and must meet with the satisfaction of the DOT and CITY.

Miscellaneous Provisions

46. All previously executed agreements (see Section 3 herein) will remain in effect except as amended herein.
47. It is the intent of both (all) parties that no third party beneficiaries be created by this Agreement.
48. If any section, provision, or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision, or part thereof not found to be invalid or unconstitutional, except to the extent that the original intent of the Agreement cannot be fulfilled.
49. This Agreement may be executed in three counterparts, each of which so executed will be deemed to be an original.
50. This Agreement, as well as the unaffected provisions of any previous agreement(s), addendum(s), and/or amendment(s); represents the entire Agreement between the FOUNDATION, the CITY and the DOT regarding this project. Any subsequent change or modification to the terms of this Agreement will be in the form of a duly executed amendment to this document.

IN WITNESS WHEREOF, each of the parties hereto has executed Preconstruction Agreement No. 2009-6-185 as of the date shown opposite its signature below.

IOWA WEST FOUNDATION:

By: _____ Date: _____, 2009.
J. Todd Graham
President and CEO

CITY OF COUNCIL BLUFFS:

By: _____ Date _____, 200 ____.
Title: Mayor

I, _____, certify that I am the Clerk of the CITY, and that
_____, who signed said Agreement for and on behalf of the CITY was
duly authorized to execute the same on the ____ day of _____, 200 ____.

Signed: _____
City Clerk of Council Bluffs, Iowa.

IOWA DEPARTMENT OF TRANSPORTATION:

By: _____ Date _____, 200 ____.
John Selmer
District Engineer
District 4

EXHIBIT A

ADJUSTMENT OR FIXTURES				
NO.	LOCATION/STATION	TYPE OF FIXTURE	ADJUSTMENT	
A-1	25+61.35, 61.40 RT	Manhole	Adjust to Grade	
A-2	26+87.50, 38.53 RT	Water Valve	Adjust to Grade	
A-3	28+87.80, 42.64 RT	Water Valve	Adjust to Grade	
A-4	31+36.64, 43.15 RT	Manhole	Adjust to Grade	
A-5	35+76.91, 41.35 RT	Water Valve	Adjust to Grade	
A-6	40+85.78, 56.88 RT	Manhole	Adjust to Grade	
A-7	40+93.30, 23.44 RT	Manhole	Adjust to Grade	
A-8	41+12.30, 46.73 RT	Manhole	Adjust to Grade	
A-9	41+91.13, 45.74 RT	Manhole	Adjust to Grade	
A-10	43+65.74, 41.34 RT	Manhole	Adjust to Grade	
A-11	44+65.37, 46.42 RT	Manhole	Adjust to Grade	
A-12	48+80.65, 50.53 RT	Manhole	Adjust to Grade	
A-13	49+53.37, 57.05 RT	Manhole	Adjust to Grade	
A-14	48+72.72, 10.44 RT	Manhole	Adjust to Grade	
A-15	48+78.13, 1.74 RT	Manhole	Adjust to Grade	
A-16	40+74.27, 23.91 RT	Manhole	Adjust to Grade	
A-17	33+24.83, 55.64 RT	Water Valve	Adjust to Grade	
A-18	36+59.81, 56.99 RT	Water Valve	Adjust to Grade	
A-19	40+85.56, 40.32 RT	Water Valve	Adjust to Grade	
A-20	40+97.68, 42.19 RT	Water Valve	Adjust to Grade	
A-21	50+76.01, 58.01 RT	Water Valve	Adjust to Grade	

RESOLUTION
NO 09-251

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE A COOPERATIVE AGREEMENT NO. 2009-6-185
WITH THE IOWA DEPARTMENT OF TRANSPORTATION
AND IOWA WEST FOUNDATION FOR THE
US 6 BROADWAY VIADUCT REPLACEMENT
PROJECT NO. BRF-6-1(113)—38-78**

WHEREAS, the city wishes to make improvements known as the
US 6 Broadway Viaduct Replacement, within the city, as therein
described; and

WHEREAS, Iowa Department of Transportation and Iowa West Foundation has
submitted an agreement to provide the work necessary for said
improvements; and

WHEREAS, the city council deems approval of said agreement to be
in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with
Iowa Department Of Transportation and Iowa West Foundation for the US 6 Broadway Viaduct
Replacement.

ADOPTED
AND
APPROVED

August 24, 2009

Thomas P. Hanafan, Mayor

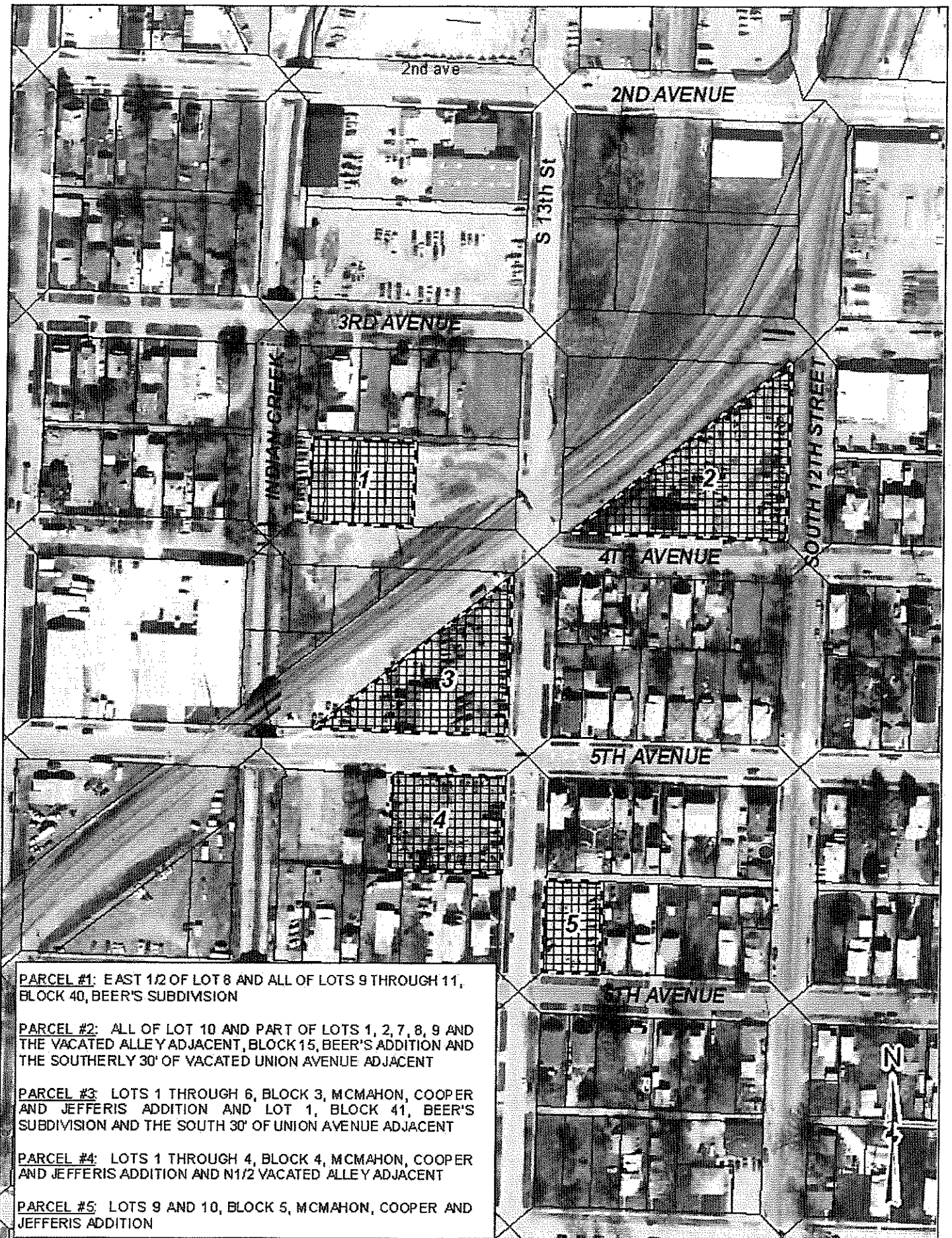
ATTEST:

Marcia L. Worden, Acting City Clerk

Council Communication

Department: Community Development Case/Project No.: N/A	Ordinance No.: N/A Resolution No.: <u>09-252</u>	City Council: 8-24-09 First Reading: N/A Second Reading: N/A Third Reading: N/A Public Hearing: N/A
Subject/Title		
Acquisition of five parcels in the vicinity of 5 th Avenue and South 13 th Street owned by Edwin and Kathryn Baker as part of the Mid-City Corridor Project.		
Location		
Map and legal descriptions attached to resolution.		
Background/Discussion		
<p>As a component of the City's Community Development Program, a Neighborhood Revitalization Strategy Area (NRSA) was adopted on August 10, 1998 by Resolution Number 98-201. One of the recommendations of the NRSA was developing a long range program of blight removal in the Mid-City Corridor area. Subsequent to the NRSA, the City established the Mid-City Corridor as an urban renewal area. This area is bounded by Avenue G on the north, 10th Street on the east, 5th Avenue on the south and 13th Street on the east. One of the objectives of the urban renewal area plan is the acquisition of vacant and blighted properties in the railroad corridor for eventual redevelopment. These efforts include the extension of the City's trail system, realignment and construction of public infrastructure, railroad consolidation and the development of open space and recreational uses. The City has received Neighborhood Stabilization Program (NSP) funds from the U.S. Department of Housing and Urban Development for the acquisition of foreclosed and/or vacant properties, which can be utilized for the Mid-City Corridor Project.</p> <p>The Community Development Department has been in contact with the Key Real Estate representing Edwin and Kathryn Baker on the acquisition of five parcels in the vicinity of 5th Avenue and South 13th Street (see attached map). These properties consist of five parcels, including two buildings, formerly used for a towing business. A purchase agreement has been negotiated and executed for the acquisition of the property pending City Council approval. The purchase price of the property is \$250,000. NSP funds will be used to cover the cost of acquisition and demolition.</p>		
Staff Recommendation		
Approval of the resolution authorizing acquisition of the property.		
Attachments		
<ol style="list-style-type: none">1. Resolution2. Attachment A - Map with property legal descriptions.		

Submitted and Approved By: Donald D. Gross, Director, Community Development Department



RESOLUTION NO. 09-252

A RESOLUTION AUTHORIZING THE ACQUISITION OF PROPERTY FROM EDWIN AND KATHRYN BAKER AS PART OF THE MID-CITY CORRIDOR PROJECT.

- WHEREAS,** the City wishes to acquire five parcels of property owned by the Edwin and Kathryn Baker located in the vicinity of 5th Avenue and South 13th Street and as depicted in Attachment “A” for the Mid-City Corridor Project; and
- WHEREAS** the City adopted a Neighborhood Revitalization Strategy Area (NSA) on August 10, 1998 by Resolution Number 98-201 recommending the Mid-City Corridor Project; and
- WHEREAS** the Mid-City Corridor Project will involve the acquisition of vacant and blighted properties in the City’s railroad corridors for eventual redevelopment and green space; and
- WHEREAS** Neighborhood Stabilization Program funds will be utilized for the Mid-City Corridor Project; and
- WHEREAS,** a real estate contract has been executed subject to City Council approval in the amount of \$250,000.

NOW, THEREFORE, BE IT RESOLVED

BY THE CITY COUNCIL

OF THE

CITY OF COUNCIL BLUFFS, IOWA:

That the acquisition of properties owned by Edwin and Kathryn Baker as depicted in Attachment “A” are hereby approved as part of the Mid-City Corridor Project.

ADOPTED

AND

APPROVED:

August 24, 2009

Thomas P. Hanafan

Mayor

ATTEST:

Marcia L. Worden, City Clerk

Council Communication

Department: Community Development Case No. SUB-09-005 Applicant: Tweedt Engineering & Construction – Doug Tweedt 4030 Greenview Rd. Council Bluffs, IA 51503	Resolution No. <u>09-253</u>	City Council: August 24, 2009 Planning Commission Meeting: August 11, 2009
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Subject/Title

Preliminary plan review for a 9 lot residential cluster subdivision (with one out lot) to be known as Glen Park Town Homes located on 1.75 acres in part of the N½ NW¼ of Section 4-74-43. Location: East side of Franklin Avenue at Forest Glen Drive.

Background/Discussion

Tweedt Engineering & Construction is requesting preliminary plan approval for a 9 lot cluster subdivision to be known as Glen Park Town Homes. A private drive with a center median and an approximately 24' wide strip parallel to Franklin Avenue are within Out lot 1. Ordinance No. 5108 approved on November 23, 1992 rezoned this land (shown as Lot 260 on the Preliminary Plan approved in 1987) from R-3/Low Density Multi-family Residential to AP/Administrative Professional District. The applicant wishes to build three triplex buildings; with one unit on each lot, each owned separately. The AP District allows single family attached dwellings/townhouses. A cluster subdivision is needed because Lots 4 through 9 will not directly abut public right-of-way. Access is from the private drive in Out lot 1. Adequate and permanent access by easement from the public street to each lot must be provided for pedestrian and vehicular traffic. A cluster subdivision also allows lot sizes for single family dwellings to be reduced by a maximum of 40% provided that an equal amount of land area is provided in adjacent common area or open space, exclusive of public or private roadways. In an AP District, the minimum lot width is 50' with a minimum lot area of 5,000 square feet. A minimum of 2,500 square feet is allowed when the lot line coincides with the common wall separating the units, which is the case here. The smallest of the proposed lots (4,620 square feet) is Lot 2, in the middle of the triplex abutting Forest Glen Dr. The rest of the lots range from 6,275 square feet to over 9,000 square feet. Lots 2, 5 and 8 are 42' wide. While Lots 4, 6, 7 and 9 are less than 50' wide at the front property line, they exceed 50' at the building setback line. The zoning is appropriate for the intended residential use. Preliminary subdivision plans are subject to review and recommendation by the Planning Commission and final approval by the City Council.

Proposed Lots 1, 2 and 3 abut Forest Glen Drive. The existing median strip forces the 3 houses on the south side to exit to the east and not directly to Franklin Avenue. The existing homes built along the north side of the street are limited to exiting only to the west; however entering from Franklin Avenue requires a turnaround somewhere to get into their driveways. Removal of a portion at the east end of the median would eliminate the access issues for both sides of the street. Access to proposed Lots 4 through 9 will be from a new private drive within Out lot 1, which also extends the entire frontage along Franklin. The roadway is shown as 26' wide. The cross section meets City standards but the geometrics do not. Subdrainage and storm inlets are not shown. Storm sewer extensions and on-site detention are shown but the calculations were not provided. Two of the basins are linked to the proposed extended storm sewer system. The third area in the southwest corner is not connected. Public Works asks that a storm inlet be placed in the south approach of the private drive connecting to the third detention area and then piped to the proposed manhole. Neither a soils report nor drainage calculations were submitted with the application.

A 20' wide permanent drainage easement extending from Lots 34 and 35 of Forest Glen Subdivision Phase 1 was included with the final plat of Forest Glen Phase 1 in 1988. This easement effects the south 45.61' of the east side and the south 20' of the existing parcel. The preliminary plan shows the storm sewer crossing Lots 8 and 9 diagonally, outside of the existing easement. The existing easement and the proposed locations effect the layout of the structure shown on proposed Lot 9. The detention areas are located in both the out lot and the individual lots. These should be identified as out lots or defined in easements both for maintenance purposes and to prevent construction of accessory structures effecting the operation of basins. The minimum width of the drainage easement shall be 20'.

Sanitary sewer will extend south along Franklin Avenue. The sewer extension needs to be located in the easement across the out lot. The sewer will be deep at this location and the 15' wide easement shown on the preliminary plan not adequate. An easement extending the full 24' to 25' width of the out lot parallel to Franklin is required. The lateral extension to proposed Lot 2 is within City right-of-way. It needs to be placed in an easement across private property with a minimum of 15' on each side of the centerline either in the front or rear of the property.

10" water mains are located in the west side of Franklin Avenue and the north side of Forest Glen Drive rights-of-way. A water main extension agreement from the Water Works is not required. However, a licensed plumber must install the service connections with Water Works inspection and approval. Final determination of hydrant needs and locations will be reviewed and approved with the construction drawings. A private hydrant is likely needed in the median within the out lot.

All utilities in the subdivision shall be underground. Streetlights shall be installed at locations approved by the Public Works Department at no expense to the City. The developer shall provide easements for the underground electric facilities on the site.

Recommendation

Approval of the preliminary plan is tentative and does not constitute acceptance of the final plat, 'but is deemed to be an authorization to proceed with the preparation of final construction plans or performance guarantee and the final plat'. (§14.11.060.04 – Subdivision Ordinance) The proposed development is consistent with the intent and purpose of the Subdivision and Zoning Ordinances. Sewer, water and other utilities are available and can be extended with adequate capacity to serve the proposed residential use. The developer bears the cost to extend the utilities to the subdivision and service to each lot.

The Community Development Department recommends preliminary plan approval for a cluster subdivision to be known as Glen Park Town Homes, as shown on the attachment, subject to the following conditions, notes and exceptions:

1. Conform to all City standards and specifications, the zoning and subdivision ordinances, including §14.14.040 – Subdivision Design and Required Improvements and the Public Works Standards for Public Improvements.
2. The site development regulations in Chapter 15.13 AP/Administrative Professional District shall apply to this subdivision.
3. All utilities shall be installed underground.
4. Investigate the feasibility of shortening the median in Forest Glen Drive to facilitate full access for the existing lots on the north side and the three lots proposed for the new subdivision.
5. Make arrangements with MidAmerican Energy regarding timing, installation and payment for any relocation and installation of lines/conduit and streetlight placement. A 10' wide utility easement is needed along the front of each lot as well along the street frontage of the out lot.
6. Easements shall be noted on the final plat with beneficiaries noted. These easements include but are not limited to: utilities, storm and sanitary systems, drainage basins, vehicular and pedestrian access through the private drive (Outlot 1).

7. Construction plans and comprehensive plans for grading, drainage and erosion control, including right-of-way, during site preparation, utility installation and construction shall be submitted to the Public Works Department for review and approval prior to beginning any earth disturbing activity. The erosion and sediment control plan shall include temporary and permanent vegetative cover on all disturbed areas, structural measures and a maintenance and inspection program to address removal of sediment during construction and following any rainfall event. Storm drainage designed for a 100-year rainfall event shall be stored within the site to discharge at levels not to exceed the predevelopment runoff amounts. The proposed detention basins shall be sized accordingly. All applicable permits necessary to meet local, state and federal requirements shall be the developer's responsibility, including grading permits, storm water pollution prevention plan and a sewer extension agreement with Iowa Department of Natural Resources (IDNR).
8. Complete arrangements with the Council Bluffs Water Works for appropriately sized and designed water supply with direct service to each lot and installed by a licensed plumber.
9. The developer shall install fire hydrants at locations, which comply with the minimum spacing requirements of the Water Works and the fire safety codes.
10. The private drive appears to meet the City's minimum pavement standards; however, the layout must comply with the minimum turn radii necessary for emergency access as determined by the Fire Marshal.
11. Provide a name for the private roadway with the final plat application.
12. Sidewalk along Franklin Avenue, built to City standards at no cost to the City, shall be completed concurrent with construction of the private drive. The remaining sidewalk along the private drive shall be 5' to 6' wide, adjacent to the curb and connected to the sidewalk along Franklin Avenue on both sides of the drive. This sidewalk shall be installed prior to issuance of the Certificate of Occupancy for each triplex structure.
13. Concurrent with the application for final plat approval, the subdivider shall submit documents regarding the permanent maintenance of the privately held drainage, open space and roadway improvements. This document along with the 'Declaration of Covenants, Conditions and Restrictions' shall be recorded with the final plat and become a part of the abstract of title for each lot in the subdivision.

Public Hearing

Doug Tweedt, 20659 McPherson Avenue, the applicant, appeared before the Planning Commission in favor of the request. No one appeared in opposition.

Planning Commission Recommendation

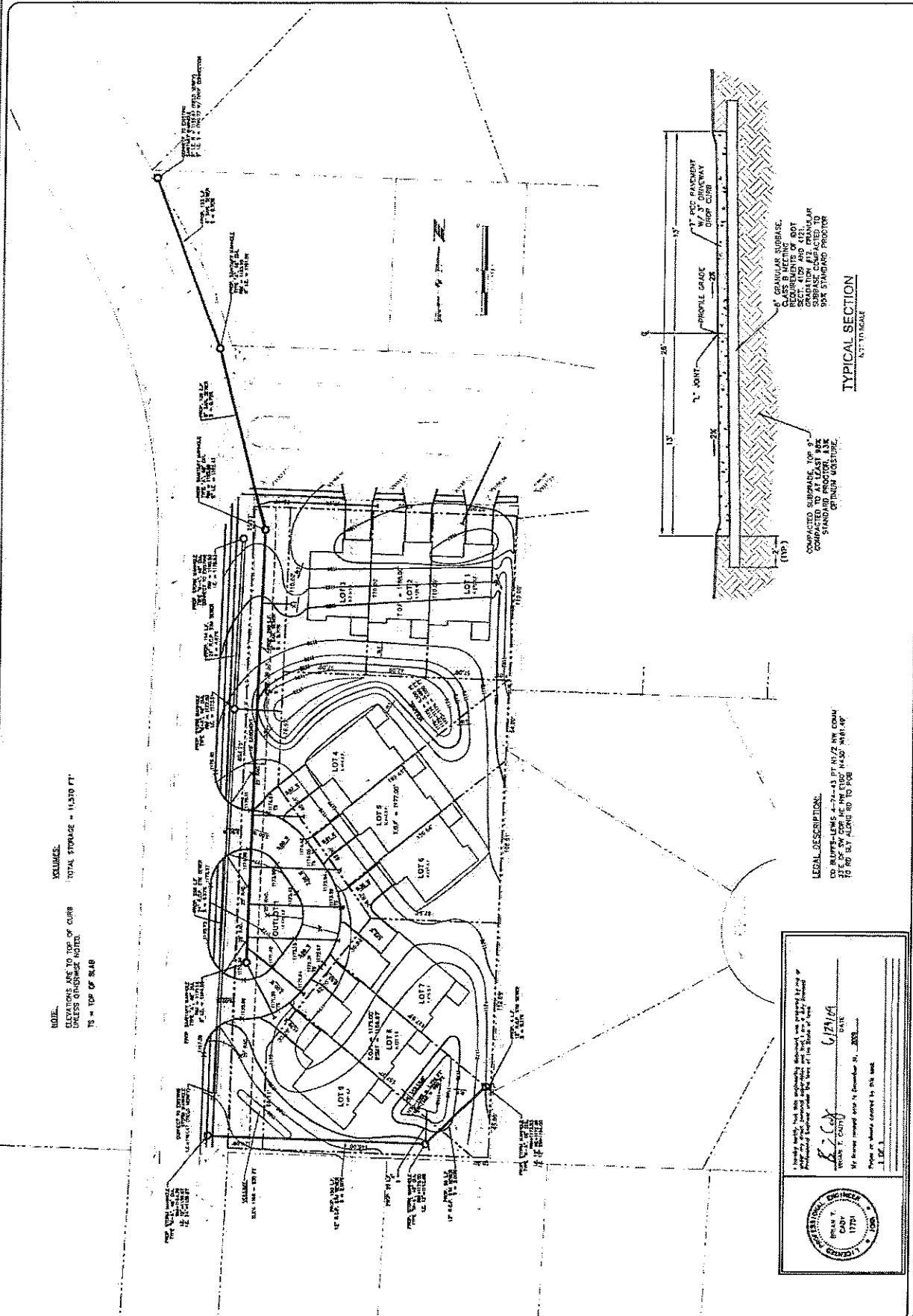
The Planning Commission recommends approval of the preliminary plan for a cluster subdivision to be known as Glen Park Town Homes as shown on the Attachment, subject to the conditions, notes and exceptions listed in the staff recommendation.

VOTE: AYE 8 NAY 0 ABSTAIN 3 ABSENT 0 Motion: Carried

Attachment: Preliminary Plat

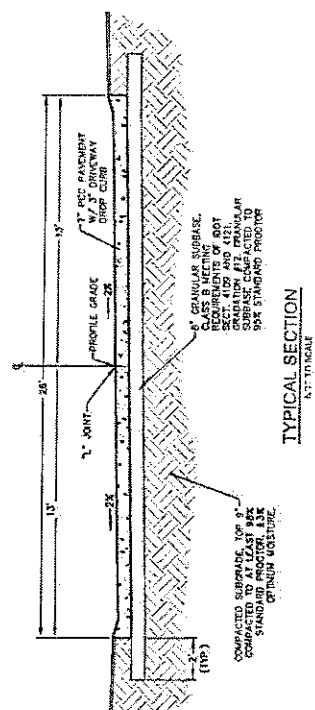
HGM – Brian Cady - 640 5th Ave., Council Bluffs, IA 51503

Prepared by: Gayle M. Malmquist, Development Services Coordinator



NOTE:
ELEVATIONS ARE TO TOP OF CURB
UNLESS OTHERWISE NOTED
TS = TOP OF SLAB

VOLUMES:
TOTAL STORAGE = 11,310 FT³



LEGAL DESCRIPTION:
TO RUNS-LENS 4-74-43 FT N/2 NW CORN
TO RUNS-LENS 4-74-43 FT N/2 NW CORN
TO RUNS-LENS 4-74-43 FT N/2 NW CORN

I hereby certify that this preliminary plat was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Alabama.

B. J. Cox DATE 6/21/04

BY T. COX DATE 6/21/04

My license expires on 12/31/04.

1 OF 1



RESOLUTION NO. 09-253

A RESOLUTION GRANTING PRELIMINARY PLAN APPROVAL FOR A NINE-LOT RESIDENTIAL CLUSTER SUBDIVISION (WITH ONE OUT LOT) TO BE KNOWN AS GLEN PARK TOWN HOMES.

WHEREAS, Tweedt Engineering and Construction is requesting preliminary plan approval for a nine-lot cluster subdivision, to be known as Glen Park Town Homes, located on the east side of Franklin Avenue at Forest Glen Drive; and

WHEREAS, the preliminary plan has been reviewed by the appropriate city departments and utilities; and

WHEREAS, approval of the preliminary plan is tentative and does not constitute acceptance of the final plat, “but is deemed to be an authorization to proceed with the preparation of final construction plans or performance guarantee and the final plat”; and

WHEREAS, the Planning Commission concurs with the Community Development Department, and recommends approval of the preliminary plan for a nine-lot cluster subdivision to be known as Glen Park Town Homes, as shown on the attachment, subject to the following actions and conditions:

1. Conform to all city standards and specifications, the zoning and subdivision ordinances, including Section 14.14.040 – Subdivision Design and Required Improvements, and the Department of Public Works Standards for Public Improvements.
2. The site development regulations in Chapter 15.13 AP/Administrative Professional District shall apply to this subdivision.
3. All utilities shall be installed underground.
4. Investigate the feasibility of shortening the median in Forest Glen Drive to facilitate full access for the existing lots on the north side and the three lots proposed for the new subdivision.
5. Make arrangements with MidAmerican Energy regarding timing, installation and payment for any relocation and installation of lines/conduit and streetlight placement. A 10' wide utility easement is needed along the front of each lot as well as along the street frontage of the out lot.
6. Easements shall be noted on the final plat with beneficiaries noted. These easements include but are not limited to: utilities, storm and sanitary systems, drainage basins, vehicular and pedestrian access through the private drive (out lot 1).
7. Construction plans and comprehensive plans for grading, drainage and erosion control, including right-of-way during site preparation, utility installation and construction shall be submitted to the Public Works Department for review and approval prior to beginning any earth disturbing activity. The erosion and sediment control plan shall include temporary and permanent vegetative cover on all disturbed areas, structural measures and a maintenance and inspection program to address removal of sediment during construction and following any rainfall event. Storm drainage designed for a 100-year rainfall event shall be stored within the site to discharge at levels not to exceed the predevelopment runoff amounts. The proposed

detention basins shall be sized accordingly. All applicable permits necessary to meet local, state and federal requirements shall be the developer's responsibility, including grading permits, storm water pollution prevention plan and a sewer extension agreement with Iowa Department of Natural Resources (DNR).

8. Complete arrangements with the Council Bluffs Water Works for appropriately sized and designed water supply with direct service to each lot and installed by a licensed plumber.

9. The developer shall install fire hydrants at locations, which comply with the minimum spacing requirements of the Water Works and the fire safety codes.

10. The private drive appears to meet the City's minimum pavement standards; however, the layout must comply with the minimum turn radii necessary for emergency access as determined by the Fire Marshal.

11. Provide a name for the private roadway with the final plat application.

12. Sidewalk along Franklin Avenue, built to City standards at no cost to the City, shall be completed concurrent with construction of the private drive. The remaining sidewalk along the private drive shall be 5' to 6' wide, adjacent to the curb and connected to the sidewalk along Franklin Avenue on both sides of the drive. This sidewalk shall be installed prior to issuance of the Certificate of Occupancy for each triplex structure.

13. Concurrent with the application for final plat approval, the subdivider shall submit documents regarding the permanent maintenance of the privately held drainage, open space and roadway improvements. This document, along with the "Declaration of Covenants, Conditions and Restrictions" shall be recorded with the final plat and become a part of the abstract of title for each lot in the subdivision.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That preliminary plan approval for a cluster subdivision to be known as Glen Park Town Homes, as shown on the attachment, is hereby approved subject to the conditions set forth above.

ADOPTED
AND
APPROVED

August 24, 2009

THOMAS P. HANAFAN

Mayor

Attest: _____

MARCIA L. WORDEN

City Clerk

Department: Community Development	Ordinance No.: N/A Resolution No.: <u>09-254</u>	City council: 8-24-09 First Reading: N/A Second Reading: N/A Third Reading: N/A Public Hearing: N/A
Case/Project No.: EZ-09-004		
Subject/Title		
Application for Enterprise Zone benefits		
Applicant		
John Dalton		
Location		
Lots 10, 27, 29 & 68 in Zaiger Addition (generally located at 25 th Avenue and South 16 th Street)		
Background/Discussion		
<p><u>Background</u></p> <p>John Dalton proposes to construct four single family homes in the Zaiger Addition on Lots 10, 27, 29 & 68. He has submitted seven building plans for this project and will utilize Dennis Pogge Construction as the builder. The homes are mostly ranch style homes with one two story plan. They will range in size from 1,047 sq. ft. to 1,493 sq. ft. and have three bedrooms and two bathrooms. All of the homes will have high efficiency forced air gas furnaces and will meet or exceed current standards for efficiency. The appliance package includes a stove, microwave and dishwasher. The project specifications are included as an attachment to the application. The developer is considering constructing the homes to be "handicap friendly" with 36 inch doorways and hallways. The developer will sod the front, side and rear yards. The total project investment is \$586,000. The per unit value of the homes will range from \$120,000 to \$175,000. However, per State statute, only the first \$140,000 of value can be claimed for the Enterprise Zone's 10% investment tax credit. The estimated total financial enterprise zone incentive available to the project is \$70,000. The developer has agreed to comply with the adopted local requirements.</p> <p><u>Discussion</u></p> <p>The City Council established Enterprise Zone-6 with the adoption of Resolution No. 07-408. The State of Iowa made this possible by the approval of the Enterprise Zone Legislation on July 1, 1997 and the revision of the law during the 1998 legislature to include housing development. Later significant amendments came in 2006 with the adoption of new criteria for new zone designation. The stipulations placed upon eligible housing projects include the construction or rehabilitation of four or more single family houses or one or more multi-family units containing three or more units.</p> <p>Based on review of the applicant's request, the project listed above meets the requirements and is located in the Council Bluffs Enterprise Zone-6. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes.</p>		
Staff Recommendation		
The Community Development Department recommends approval of the application submitted by John Dalton for Lots 10, 27, 29 and 68 in Zaiger Addition, for Enterprise Zone benefits.		

Enterprise Zone Commission Recommendation

On July 29, 2009, the Council Bluffs Enterprise Zone Commission met and approved the Enterprise Zone application for John Dalton. Motion by Stazzoni, second by Milford to concur with staff recommendation and approve the EZ application for John Dalton, subject to local and state approval of an amendment to the corresponding Key Development LLC Enterprise Zone agreement and the submission by the developer of any revised blueprints for the homes. The motion carried by unanimous voice vote.

VOTE: AYE – Andersen, Bates, Jares, Milford and Stazzoni; NAY – None; ABSTAIN – Prichard; ABSENT – Biede, Hornbeck

Attachments

The John Dalton Enterprise Zone application discussed above has been provided under separate cover.

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department

Approved by: Donald D. Gross, Director, Community Development Department

RESOLUTION NO. 09-254

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS
AUTHORIZING A JOINT APPLICATION TO THE IOWA DEPARTMENT OF
ECONOMIC DEVELOPMENT (IDED) BY THE COUNCIL BLUFFS ENTERPRISE ZONE
COMMISSION AND JOHN DALTON FOR ENTERPRISE ZONE BENEFITS.**

WHEREAS, The City of Council Bluffs established Enterprise Zone-6 with the adoption of Resolution No. 07-408; and

WHEREAS, Enterprise Zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and

WHEREAS, John Dalton proposes to construct four single-family units and has requested Enterprise Zone benefits; and

WHEREAS, All four of the homes will be located in Zaiger Addition, which is generally located at 25th Avenue and South 16th Street; and

WHEREAS, The legal description of the homes is Lots 10, 27, 29 and 68, Zaiger Addition, City of Council Bluffs, Pottawattamie County, Iowa; and

WHEREAS, On July 29, 2009, the Enterprise Zone Commission held a public meeting to review the request of John Dalton; and

WHEREAS, After review and consideration of the request, the Enterprise Zone Commission determined that the John Dalton project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

Section 1.0 The City Council finds that the John Dalton project is located within the Council Bluffs Enterprise Zone-6 as approved with the adoption of Resolution No. 07-408.

Section 2.0 The City Council declares John Dalton an eligible entity for Enterprise Zone benefits.

Section 3.0 The City Council approves the John Dalton request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

Section 4.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 5.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 6.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 7.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 8.0 That the approval of any and all Enterprise Zone benefits is contingent upon John Dalton meeting all other City codes and ordinances, state and local approval of an amendment to the corresponding Key Development LLC Enterprise Zone agreement and the submission by the developer of any revised blueprints for the homes.

Section 9.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED
AND
APPROVED:

August 24, 2009

Thomas P. Hanafan

Mayor

ATTEST:

Marcia L. Worden

City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2009, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Marcia L. Worden, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Marcia L. Worden, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State

Council Communication

Department: Community Development Case/Project No.: EZ-09-005	Ordinance No.: N/A Resolution No.: <u>09-255</u>	City Council: 8-24-09 First Reading: N/A Second Reading: N/A Third Reading: N/A Public Hearing: N/A
Subject/Title		
Amendment #1 to 07-HEZ-020		
Applicant		
Key Development LLC		
Location		
Lots 10, 17, 18, 19, 20, 25, 26, 27, 28, 29, 30, 63, 64, 65, 66, 67, 68, 86, 87, 88, 89, 90 and 91 in Zaiger Addition (generally located at 25 th Avenue and South 16 th Street)		
Background/Discussion		
<p><u>Background</u> In August of 2006, Key Development LLC submitted a request for Enterprise Zone benefits for 23 lots located in the Zaiger Addition. The Enterprise Zone program requires eligible housing businesses to complete their construction or rehabilitation within two years from the time the business begins the work. In real terms, the two year time clock starts when the builder begins the project with actual construction.</p> <p><u>Discussion</u> The EZ benefits are an all or nothing benefit. The law states that repayment of the benefits is required by the housing business if they fail to meet the unit accomplishment. For example, if you were approved for 23 SF housing units and you only complete 20 units within the 2 year timeframe then you receive \$0 benefits. Additionally, if you had received some of the financial benefits during the previous tax year, you would be required to repay the State for what you had received. This includes <u>both</u> the tax credits and the rebates on sales and use taxes.</p> <p>The State allows a one year amendment to the two year time clock, which essentially allows three years to construct the homes. However due to market conditions, Key Development LLC is concerned they will not be able to meet this construction time requirement and they have already utilized their one year amendment. They have requested to amend their contract down to 15.</p>		
Staff Recommendation		
The Community Development Department recommends approval of Amendment #1 to the Enterprise Zone agreement (07-HEZ-020) submitted by Key Development LLC reducing the number of single family homes from 23 to 15.		
Enterprise Zone Commission Recommendation		
On August 13, 2009, the Council Bluffs Enterprise Zone Commission approved Amendment #1 to the Enterprise Zone agreement for Key Development.		
VOTE: AYE – Andersen, Hornbeck, Jares, Prichard and Stazzoni; NAY – None; ABSTAIN – None; ABSENT – Bates, Biede and Milford		

Submitted by: Brenda Carrico, Program Coordinator, Community Development Department
 Approved by: Donald D. Gross, Director, Community Development Department

RESOLUTION NO. 09-255

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS AUTHORIZING SUBMISSION OF AMENDMENT #1 TO EZ AGREEMENT 07-HEZ-020 TO THE IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT (IDED) BY THE COUNCIL BLUFFS ENTERPRISE ZONE COMMISSION AND KEY DEVELOPMENT LLC FOR ENTERPRISE ZONE BENEFITS.

- WHEREAS,** The City of Council Bluffs established Enterprise Zone-6 with the adoption of Resolution No. 07-408 and
- WHEREAS,** Enterprise Zones and the eligible benefits under House File 724 were established to promote economic and housing development in distressed areas; and
- WHEREAS,** In August of 2006, Key Development LLC received approval from the Enterprise Zone Commission and the State of Iowa for enterprise zone benefits to construct 23 single family residential structures; and
- WHEREAS,** The legal description of the Enterprise Zone assisted units was Lots 10, 17, 18, 19, 20, 25, 26, 27, 28, 29, 30, 63, 64, 65, 66, 67, 68, 86, 87, 88, 89, 90 and 91, Zaiger Addition, City of Council Bluffs, Pottawattamie County; and
- WHEREAS,** Key Development LLC has requested Amendment #1 to their existing Enterprise Zone Agreement; and
- WHEREAS,** This amendment reduces the number of units from 23 to 15; and
- WHEREAS,** The new legal description of the lots that Key Development LLC will build on or has already built on is Lots 17, 18, 19, 20, 25, 26, 28, 30, 63, 86, 87, 88, 89, 90 and 91, Zaiger Addition, City of Council Bluffs, Pottawattamie County; and
- WHEREAS,** On August 13, 2009, the Enterprise Zone Commission reviewed the amendment request of Key Development LLC; and
- WHEREAS,** After review and consideration of the request, the Enterprise Zone Commission determined that the Key Development LLC project continues to meet the requirements to qualify for benefits and merits approval of Amendment #1.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

- Section 1.0** The City Council finds that the Key Development LLC project is located within the Council Bluffs Enterprise Zone-6 as approved with the adoption of Resolution No. 07-151.
- Section 2.0** The City Council declares Key Development LLC an eligible entity for Enterprise Zone benefits.
- Section 3.0** That the City Clerk shall provide a copy of this resolution to the Iowa Department of Economic Development.

Section 4.0 The City Council approves the Key Development LLC request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

Section 5.0 The Mayor is hereby authorized to take such further actions as are deemed necessary in order to carry into effect the provisions of this resolution.

Section 6.0 The provisions of this resolution shall be governed by the laws of the State of Iowa.

Section 7.0 That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

Section 8.0 That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

Section 9.0 That the approval of any and all Enterprise Zone benefits is contingent upon Key Development LLC meeting all other City codes and ordinances.

Section 10.0 That this resolution shall become effective immediately upon its passage and approval.

ADOPTED
AND
APPROVED:

August 24, 2009

Thomas P. Hanafan

Mayor

ATTEST:

Marcia L. Worden

City Clerk

STATE OF IOWA)
COUNTY OF)ss
POTTAWATTAMIE)

On this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for said County and State, personally appeared Thomas P. Hanafan and Marcia L. Worden, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Thomas P. Hanafan and said Marcia L. Worden, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

Notary Public in and for said State